167-688

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 386.

CARLOTTA M. MacGREAL AND WILBURNE P. MacGREAL, APPELLANTS,

vs.

ROSE M. TAYLOR AND MAMIE E. NORMENT, EXECUTRICES OF SARAH UTERMEHLE, DECEASED.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED MARCH 5, 1894.

(15,518.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 336.

CARLOTTA M. MacGREAL AND WILBURNE P. MacGREAL, APPELLANTS,

vs.

ROSE M. TAYLOR AND MAMIE E. NORMENT, EXECUTRICES OF SARAH UTERMEHLE, DECEASED.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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1 Filed Jun- 23, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

SARAH UTERMEHLE, Complainant, *vs.* CARLOTTA M. MACGREAL and WILBURNE Pierre MacGreal, Her Husband, and William R. Woodward and Leroy M. Taylor, Trustees, Defendants.	No. 12568.	In Equity. Dock. 31.

To the supreme court of the District of Columbia, sitting in equity, the complainant states as follows:

First. That she is the widow of the late George W. Utermehle, a citizen of the United States; that she is now and for many years last past has been a resident of the District of Columbia, and she brings this suit in her own right. The complainant and all of the defendants are adults.

Second. The defendants Carlotta M. MacGreal and Wilburne Pierre MacGreal are husband and wife. The said Carlotta is sued in her own right respecting and concerning her separate property and estate, as hereinafter set forth, and the said Wilburn Pierre MacGreal is sued by virtue of his marital rights as her husband. The defendants William R. Woodward and Leroy M. Taylor are sued as trustees, as hereinafter stated. All of the defendants are also residents of the District of Columbia.

Third. On or about the 3rd day of September, 1887, one Henry C. Porter conveyed to Robert E. Moore and to the defendant Carlotta M. MacGreal, then his wife, that certain unimproved
2 lot or parcel of ground situate and lying in the city of Washington, in the District aforesaid, and known as and being the lot numbered forty-nine (49), in the square numbered one hundred and eleven (111), which subdivision is recorded in the Liber J. H. K., at folio or page 373, of the surveyor's office of the said District, to have and to hold the same to the said Robert E. and Carlotta M., his wife, their heirs and assigns, as tenants by the entirety. Said deed was recorded among the land records for said District on the 28th day of Sept'r, 1887, in the Liber 1277, at folio 409.

Fourth. At the time of the said conveyance the said lot and parcel of ground and premises was encumbered by a certain deed of trust from the said Porter to Seymour Cunningham and John S. Blair, being dated March 8th, 1886, to secure the balance of the unpaid purchase-money therefor, due from said Porter to one William Brough, represented by the two (2) certain promissory notes of the said Porter, payable to the order of said Brough, for twelve hundred and fifty dollars ($1,250.00) each, bearing even date with said trust deed and more fully and particularly described therein, said trust deed being recorded amongst said land records on the 9th day of March, 1886, in the Liber No. 1163, at folio 485; and, as a part

of the consideration for the conveyance to the said Robert E. and Carlotta M. Moore described in the paragraph last aforesaid, the said Carlotta agreed to assume and to pay the balance due on account of said purchase-money to said Brough and represented by said two (2) promissory notes.

3 Fifth. By deed bearing the same date as the deed from the said Porter to the said Robert E. and Carlotta M. Moore, as aforesaid, and executed contemporaneous therewith, they, the said Robert E. and Carlotta M., conveyed the said land and premises to one Charles Early and Joseph T. Dyer in trust to secure the sum of sixteen hundred dollars ($1,600), being the balance of the deferred purchase-money due therefor to said Porter and represented by their certain promissory note in and for that sum, bearing even date therewith, and payable to the order of said Porter within a certain fixed time, as more fully and particularly set forth in said trust deed, recorded on the 28th day of Sept'r, 1887, in the Liber No. 1277, at folio 411, of said land records.

Sixth. Between the date of the execution of the trust deed last aforesaid and the 22nd day of October, 1889, to wit, on or about the 20th day of April, 1888, the said Robert E. Moore departed this life, and by his death the said real estate and premises devolved upon and became the absolute and separate property and estate of the said Carlotta in fee-simple, subject, however, to the amount due on account of the two (2) trust deeds hereinbefore set forth, representing the deferred purchase-moneys, as aforesaid, and to the encumbrances of said trust deeds.

Seventh. On or about the 22nd day of October, 1889, at which time the said promissory notes representing the said unpaid purchase-money were overdue and she being in default under the provisions of said trust deeds given to secure the same, and being then pressed for payment thereof and threatened with foreclosure and sale under said trust deeds, but being unable to pay the same and having no other resources except her interest in said lot and premises, and her title thereto being in jeopardy and she

4 being in danger of great loss and injury in the premises, and being desirous to provide for the payment of said overdue notes or to have the same taken up, and to save her said property, and also to improve the said lot of ground and premises by the erection of a substantial building for the purpose of a home, the said Carlotta applied to the complainant for a loan of the sum of eight thousand dollars ($8,000.00) for a period of three years, she agreeing to pay interest thereon at the rate of six per centum per annum, payable quarter-yearly, and she also agreeing to secure the same by a good and valid deed of trust on said land and premises in the ordinary and usual form; and upon the representation by her to your complainant that the title thereto was good and encumbered only by the two trust deeds aforesaid, and upon the further assurance by the said Carlotta that she would immediately commence the construction of a substantial brick dwelling upon said lot and premises, with suitable provisions to secure the payment or application of all of the proceeds of said loan (not required to take

up the said overdue notes, representing said unpaid purchase-money, taxes then due, expense of examination of title to said land and premises, conveyancing, and other incidental expenses incurred on account of the negotiation of said loan, all of which were also to be taken up or paid therefrom) towards such construction, and, relying upon the faith and credit of such security and said promise, the complainant loaned to the said Carlotta the said sum of eight thousand dollars ($8,000.00), and thereupon the complainant paid therefrom and took up the notes then overdue, representing the unpaid purchase-money, as aforesaid (which notes she now holds), certain taxes then due on said property, expense of examination of
5 title, conveyancing, and incidental expenses incurred on account of the negotiation of said loan, and amounting in the aggregate to the sum of three thousand two hundred and ninety-one and $\frac{99}{100}$ dollars ($3,291.99), the money to pay the same being paid directly by the complainant to the holders of said notes and to the parties to whom said taxes and expenses were properly payable; and thereupon the said Carlotta forthwith undertook the construction of a substantial brick dwelling upon said lot and premises, as agreed upon and as a condition for her said loan as aforesaid, and the balance of said sum of eight thousand dollars was duly expended in the purchase of materials furnished for and used in its construction, and to pay laborers, mechanics, and others for work done thereon. Said house or dwelling is now substantially completed and is otherwise known as No. 1612 19th street northwest, in said city, and is now in the actual use and occupation of the said Carlotta and her present husband, the said Wilburn Pierre MacGreal (to whom she was married since said loan from the complainant was made to her), as a home.

Eighth. As evidence of said loan the said Carlotta made and passed to the complainant her certain promissory note in and for said sum of eight thousand dollars ($8,000.00), being dated October 22nd, 1889, and payable to the order of the complainant in three years after its date, with interest thereon at the rate of six per centum per annum, payable quarter-yearly, and in pursuance of the agreement, as security for the said $8,000.00 loan, as aforesaid, the said Carlotta, by deed bearing even date with said promissory note, conveyed the said lot of ground and premises and
6 appurtenances to the defendants William R. Woodward and Leroy M. Taylor and their heirs, as joint tenants, in trust to secure the payment thereof, with the usual provisions contained therein for a release in case of payment of said note, and also upon trust to said Woodward and Taylor upon any default being made in the payment of the said debt or note or any instalment of interest or principal, as the same should become due and payable, to sell the said described land and premises at public auction, upon the terms and conditions therein set forth, with authority upon any such sale to convey the same in fee-simple and at the cost of the purchaser or purchasers thereof, and who shall not be required to see to the application of the purchase-money; and upon further trust, out of the proceeds of such sale or sales, first, to pay all proper

costs, charges, and expenses, including all taxes, general and special, due upon said land and premises at the time of sale, and to retain as compensation a commission of five (5) per cent. on the amount of such sale; second, to pay whatever may then remain unpaid of the said debt represented by said note and the interest, whether the same should be due or not; and, lastly, to pay the remainder of such proceeds, if there be any, to the said Carlotta, her heirs, executors, administrators, and assigns. The complainant avers that by the terms and provisions of said promissory note and said trust deed to the said Woodward and Taylor to secure the same, upon default in the payment of any quarter-yearly instalment of interest on said note the whole amount of said indebtedness became immediately due and payable, and that the complainant is entitled under the terms of said trust deed on such sale for default to be paid the whole indebtedness represented by said
7 note, with interest thereon in accordance with its terms and tenor. Said trust deed was duly executed and delivered by the said Carlotta, and the said promissory note was duly signed by her and passed to the complainant at or about the dates thereof and contemporaneous with the loan to her, as aforesaid, and said trust deed was duly recorded on the day of its date in the Liber No. 1436, at folio 129 *et seq.*, of said land records.

Ninth. Complainant further charges and avers that since the delivery thereof to her as aforesaid she has been and is now the *bona fide* holder and owner of said promissory note; that the quarter-yearly instalment of interest thereon falling due on the 22nd day of April last past has not been paid, and the defendant, the said Carlotta M. MacGreal, is in default on account of its nonpayment, and, although requested, she has failed and refuses to pay the same, and there is now due to the complainant the sum of eight thousand dollars ($8,000.00), with interest thereon from the 22nd day of January, 1890, exclusive of all set-offs and just grounds of defense, and the complainant is entitled to recover from the said Carlotta the sum of eight thousand dollars ($8,000.00), with interest thereon, at the rate stated, from January 22nd, 1890, and is also entitled to a foreclosure of said deed of trust, and to have the said property sold for the purpose of paying the amount due to your complainant as aforesaid and in the premises.

Tenth. Your complainant makes the record of the several conveyances aforesaid a part of this bill of complaint and asks leave to read the same or to produce or read certified copies thereof at the hearing.

8 Wherefore, the premises considered, your complainant prays:

First. That process may issue against the said defendants, Carlotta M. MacGreal and Wilburne Pierre MacGreal, William R. Woodward, and Leroy M. Taylor, requiring them and each of them to appear and answer under oath, to the best of their knowledge, information, and belief, the several matters and things in this bill alleged.

Second. That the defendant Carlotta M. MacGreal be decreed to

pay to the complainant the amount of her said indebtedness, with interest thereon as aforesaid, and the costs of this suit.

Third. That the trust deed to the defendants Woodward and Taylor may be foreclosed and the real estate and premises sold under the authority and decree of this court and the proceeds thereof applied to the satisfaction of this complainant's said claim; and,

Fourth. That your complainant may have such other and further relief in the premises as the nature of the case may require.

The defendants to this bill are Carlotta M. MacGreal and Wilburne Pierre MacGreal, her husband, and William R. Woodward and Leroy M. Taylor, trustees.

SARAH UTERMEHLE.

WM. R. WOODWARD,
Solicitor for Complainant.
EDWARDS & BARNARD, *Of Counsel.*

9 (Endorsed:) No. 12568, docket 31. In equity. In the supreme court of the District of Columbia. Sarah Utermehle *vs.* Carlotta M. MacGreal *et al.* Original bill for sale of sublot 49, square 111, in Washington city, D. C., to pay charges & encumbrances, &c., &c. Filed Jun- 23, 1890. R. J. Meigs, clerk.

10 In the Supreme Court of the District of Columbia, June 23d, 1890.

SARAH UTTERMEHLE, Complainant,
against
CARLOTTA M. MACGREAL *et al.*, Defendant-. } No. 12568, Equity Docket.

The President of the United States to Carlotta M. MacGreal (P., June 23, Ransdell) and Wilburn Pierre MacGreal (P., June 23, Ransdell), defendant-:

You are hereby commanded to appear in this court at its first special term occurring ten days after service of this subpœna and answer the exigency of the original bill, under pain of attachment and such other process of contempt as the court shall award.

Witness E. F. Bingham, chief justice.

R. J. MEIGS, *Clerk, &c.,*
[SEAL.] By L. C. WILLIAMS, *Ass't Clerk.*

MEMORANDUM.—That the defendant herewith served is to enter appearance in this suit, in the clerk's office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

(Endorsed:) Restraining order. The defendant is hereby restrained, as prayed in the within-mentioned bill, until further order, to be made, if at all, after a hearing, which is fixed for the
11 — day of ——, 188–, of which take notice. By the court:
—— ——, justice. Attest: —— ——, clerk, &c., by ——

——, ass't clerk, &c. No. 12568, equity docket 31. Spa. to ans. original bill. Sarah Uttermehle *vs.* Carlotta M. MacGreal *et al.* Subpœna to answer. Issued June 23, 1890; returned June 24, 1890. Served both the within-named defendants June 23, 1890 D. M. Ransdell, marshal. W. Redin Woodward.

12 Filed Oct. 13, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

SARAH UTERMEHLE, Plaintiff,
vs.
CARLOTTA M. MACGREAL and WILBURNE Pierre MacGreal, Her Husband, *et al.*, Defendants. } No. 12568. In Equity.

The Separate Answer of Defendant Carlotta M. MacGreal to the Bill of Complaint in this Cause Filed.

For answer to the said bill of complaint, or so much thereof as may be necessary, as she is advised, the defendant makes answer thereto (hereby expressly reserving all right of demurrer or other objection to said bill to which she may be entitled by reason of errors and imperfections in said bill contained) as follows:

First. She admits the first paragraph of the bill to be true.

Second. She admits the second paragraph of the bill to be true.

Third. She admits the averments of the third and fourth paragraphs of the bill.

Fourth. She admits the averments of the fifth and sixth paragraphs of the bill.

Fifth. Answering the seventh, eighth, and ninth paragraphs of the bill, this defendant says that on the 22nd day of November,

13 A. D. 1889, she did execute the deed of trust and promissory note referred to in said paragraph of the bill, but the said eight thousand dollars described in the deed of trust and represented by the notes referred to in said paragraph never came into her possession or under her control, but that the same was placed in the hands of a trustee chosen by the complainant and disbursed by him. It is not true, as averred in these paragraphs of the bill, that the money was applied to pay all the cost of erecting a building on the lot and premises described in the bill, for the reason that, over and above the contract price for the house, there have been liens filed in the clerk's office of the District of Columbia aggregating the sum of $3,339.63 *dollars*, besides a claim of $195, which ought to have been paid or looked after by the trustee selected by the complainants if, as they charge, the money was advanced under an alleged promise and agreement of this defendant to repay the same to the complainant. This defendant craves leave at the hearing to refer to the several liens now on file in the clerk's office as part of this paragraph of her answer.

Sixth. For further answer to the bill of complaint in this cause,

this defendant says that the said bill does not state a case that entitles the complainant to any relief in this court, and the defendant claims the same benefit from this her answer as though she had demurred to the complainant's bill.

And, further answering, the defendant Carlotta M. MacGreal says that at the time of the making of the alleged contract with the complainant, as well as at the time of the execution of the alleged deed of trust and the alleged promissory note set forth in the seventh, eighth, and ninth paragraphs of the bill, she was an infant, under the age of 21 years, to wit, of the age of twenty years and four months, and she is advised that the said alleged con-
14 tract and deed of trust and notes were voidable by her at her election, when she became of age; that within a reasonable time after she had attained the age of 21 years (to wit, on the 20th day of June, A. D. 1890, and the date of this defendant's birth, being the 20th day of June, A. D. 1869), she, by paper-writing duly executed by her, as well as by a subsequent deed to William P. Black, dated respectively the 23 day of June and the 27 day of June, 1890, and recorded respectively in Liber 1503, fol. 314, and Lib. 1500, folio 4½, among the land records of the District of Columbia, placed upon record an absolute disclaimer of any alleged contract made with the complainant, and she previously had notified the complainant, through her attorney, that she intended to disclaim any liability under said alleged contract made as set forth in the bill, and she claims the same benefit from this her answer as though she had filed a special plea of infancy to the bill of complaint.

CARLOTTA MacGREAL.

CHAS. A. ELLIOT,
Sol. for Def't.

I do solemnly swear that I have heard read the above answer, and that the facts therein stated upon my own knowledge are true, and that those stated upon information and belief I believe to be true.

CARLOTTA MacGREAL.

Subscribed and sworn to this 13th day of October, 1890.

[SEAL.] CHARLES WALTER,
Notary Public, D. C.

(Endorsed:) No. 12568. Eq. Sarah Utermehle *vs.* Carlotta M. MacGreal *et al.* Separate answer of defendant Carlotta M. MacGreal. Filed Oct. 13, 1890. R. J. Meigs, clerk.

15 Filed Oct. 13, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

SARAH UTERMEHLE, Plaintiff,
vs.
CARLOTTA M. MACGREAL and WILBURNE PIERRE MACGREAL, Her Husband, *et al.*, Defendants. } No. 12568. In Equity.

Separate Answer of Defendant Wilburne Pierre MacGreal to the Bill of Complaint.

For answer this defendant says:

He admits the first and second paragraphs of the bill, and that he is the husband of his codefendant, Carlotta M. MacGreal, to whom he was married on the 17 day of February, A. D. 1890.

This defendant has no personal knowledge of the other matters and things contained in said bill and calls for proof of the same, if material to him.

For further answer to the bill of complaint in this cause, this defendant says that the said bill does not state a case that entitles the complainant to any relief in this court, and the defendant claims the same benefit from this his answer as though he had demurred to the complainant's bill.

WILBURNE PIERRE MACGREAL.

CHAS. A. ELLIOT,
Sol. for Def't.

16 Subscribed and sworn to before me this 13th day of October, A. D. 1890.

CHARLES WALTER,
[SEAL.] *Notary Public, D. C.*

(Endorsed:) No. 12568. Eq. Utermehle *vs.* MacGreal. Separate answer of W. P. MacGreal. F.

17 Filed Oct. 23, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

SARAH UTERMEHLE
vs.
CARLOTTA M. MACGREAL *et al.* } No. 12568. In Equity. Docket 31.

Replication.

The complainant hereby joins issue on the answers of the defendants MacGreal filed in the above-entitled cause.

WM. REDIN WOODWARD,
Solicitor for Complainant.

EDWARDS & BARNARD, *Of Counsel.*

(Endorsed:) 12568. Equity. Utermehle *vs.* MacGreal & *al.* Replication. Filed Oct. 23, 1890. R. J. Meigs, clerk.

18 Filed Oct. 31, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

SARAH UTTERMEHLE
vs.
CARLOTTA M. MACGREAL *et al.* } No. 12568, Eq. Doc. 31.

To the honorable judge of the supreme court, sitting in equity:

The Joint Answer of Leroy M. Taylor and William R. Woodward, Trustees, to the Bill of Complaint Herein Exhibited.

Appearing herein and waiving service of process, for answer to said bill do say:

We admit the allegations therein contained to be true and submit to such decree in the premises as may be just and proper.

LEROY M. TAYLOR.
WM. R. WOODWARD.

(Endorsed:) No. 12568, eq. doc. 31. Sarah Utermehle *vs.* Carlotta M. McGreal *et al.* Joint answer of L. M. Taylor & W. R. Woodward, trustees. Filed Oct. 31, 1890. R. J. Meigs, clerk.

19 Filed Sep. 23, 1891. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

UTERMEHLE
vs.
MACGREAL *et al.* } No. 12568. Equity.

The clerk will set this cause for hearing at the next (October) special term.

EDWARDS & BARNARD,
Complainant's Solicitors.
CHAS. A. ELLIOT,
Defendants' Solicitor.

(Endorsed:) No. 12568. Equity. Utermehle *vs.* MacGreal *et al.* Order to set cause for hearing at October, 1891, Ap'l, term. To the clerk. Filed Sep. 23, 1891. R. J. Meigs, clerk.

20 Filed Jun- 25, 1892. J. R. Young, clerk.

In the Supreme Court of the District of Columbia.

SARAH F. UTERMEHLE
vs.
CARLOTTA M. MACGREAL. } Equity. No. 12568, Docket —.

This cause coming on to be heard on the bill of complaint, answers, testimony, &c., and the same having been argued by counsel and duly considered, it is, this 25th day of June, A. D. 1893, ad-

judged, ordered, and decreed that the bill of complaint in this suit be, and the same is hereby, dismissed, and that the defendant MacGreal recover against the complainant her costs, to be taxed by the clerk, and have execution therefor as at law.

From this decree the complainant in open court appeals to the court in general term.

By the court:

A. C. BRADLEY.

(Endorsed:) No. 12568. Eq. Utermehle *vs.* MacGreal. Decree dismissing bill. Appeal to G. T. M. 35, p. 37. Filed Jun- 25, 1892. J. R. Young, clerk.

21 Filed Mar. 28, 1893. J. R. Young, clerk.

In the Supreme Court of the District of Columbia, in General Term.

SARAH UTERMEHLE *vs.* CARLOTTA MACGREAL *et al.* } No. 12568. In Equity.

Now come the complainant's solicitors and suggest to the court the death of the complainant, which occurred in her residence, in this District, on the 13th day of the present month of March, while this cause was pending in this court in general term; that she died testate, and in and by her last will and testament appointed her two daughters, Rose M. Taylor and Mamie E. Norment, the executrices thereof; that said will has been proven and admitted to probate and record in this court holding a special term for orphans' court business, and letters testamentary issued to said executrices, as will appear by the certificate of the register of wills for said District, hereto annexed, marked Exhibit A.

WM. REDIN WOODWARD,
EDWARDS & BARNARD, *Solicitors.*

March 27, 1893.

And now comes, also, Rose M. Taylor and Mamie E. Norment, the said legal representatives of the complainant, and ask to be admitted parties to this suit, and that the cause proceed to hearing and determination as in other cases, according to the rules
22 and practice of this court.

R. M. ROSE M. TAYLOR,
M. E. MAMIE E. NORMENT,
Executrices of Sarah Utermehle.

WM. REDIN WOODWARD,
EDWARDS & BARNARD, *Solicitors.*

(Endorsad:) 12568. Equity. Utermehle *v.* MacGreal *et al.* In general term. Suggestion of death of complainant and voluntary appearance of Rose M. Taylor and Mamie E. Norment as executrices. Filed Mar. 28, 1893. J. R. Young, clerk.

23 EXHIBIT A.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

The United States of America to all persons to whom these presents shall come, Greeting:

Know ye that on the 24th day of March, in the year of our Lord 1893, administration of all the goods, chattels, and credits of Sarah Utermehle, late of District of Columbia, deceased, was by the supreme court of the District of Columbia aforesaid granted and committed unto Rose M. Taylor and Mamie E. Norment, who, as executrices of said deceased, first executed a bond to the United States, with good sureties, approved by the said court, in the penalty of five thousand dollars, conditioned for the faithful performance of the trust in them reposed, they having taken the required oath, and whose appointment is unrevoked and still in force.

Witness Alexander B. Hagner, justice holding the special term of the said supreme court for orphans' court business, this 24th day of March, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and seventeenth.

Teste: L. P. WRIGHT,
Register of Wills for the District of Columbia.

24 Filed Mar. 28, 1893. J. R. Young, clerk.

In the Supreme Court of the District of Columbia, in General Term.

SARAH UTERMEHLE
v.
CARLOTTA MACGREAL & *al.* } 12568. Equity.

The complainant's death, pending the appeal in this court, having been suggested, and Rose M. Taylor and Mamie E. Norment, the executrices under her will, voluntarily appearing and asking to be admitted complainants herein, it is, this 28th day of March, 1893, ordered that the said legal representatives be, and they are hereby, admitted parties complainant herein.

A. B. HAGNER.

(Endorsed:) 12568. Equity. Utermehle *v.* MacGreal & *al.* Order in gen'l term admitting legal representatives parties complainant. 8 M. G. T., p. 56. Filed Mar. 28, 1893. J. R. Young, clerk.

25 In the Supreme Court of the District of Columbia.

SARAH UTERMEHLE
vs.
CARLOTTA M. MACGREAL *et al.* } No. 12568. Equity.

On the application of W. Redin Woodward, Esq., solicitor, and Messrs. Edwards & Barnard, counsel for complainant, I hereby appoint Monday, November 10, 1890, at 1 o'clock p. m., and the office of said Edwards & Barnard, No. 500 5th street N. W., in the city of Washington, D. C., as the time and place for the oral examination of witnesses for the complainant in the above-entitled cause, and I hereby direct that notice be served on Charles A. Elliott, Esq., solicitor for defendants MacGreal, of the time and place fixed for said examination.

Nov. 5, 1890.

OSCAR NAUCK, *Examiner.*

To Charles A. Elliott, Esq., solicitor for defendants MacGreal:

Take notice that at the time and place mentioned in the foregoing order we shall proceed to examine witnesses for the complainant, and shall continue the same from time to time, by adjournment, until the testimony is completed.

WM. REDIN WOODWARD,
Solicitor for Complainant.
EDWARDS & BARNARD,
Of Counsel for Complainant.

Service of above order and notice acknowledged this — day of November, A. D. 1890.

CHAS. A. ELLIOT,
Solicitor for Defendants.

26 In the Supreme Court of the District of Columbia.

UTERMEHLE
vs.
MACGREAL *et al.* } No. 12568. Equity.

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27 In the Supreme Court of the District of Columbia.

UTERMEHLE
vs.
MACGREAL *et al.* } No. 12568. Equity.

WASHINGTON, D. C., *November* 10, 1890—1 p. m.

Met, pursuant to notice, at the office of Messrs. Edwards & Barnard, No. 500 5th street N. W.

Present: W. Redin Woodward, solicitor, and Messrs. Edwards and Barnard, counsel for complainant; Charles A. Elliott, Esq., solicitor for the defendants MacGreal; the defendants MacGreal in person, and the examiner and witnesses; whereupon—

WILLIAM R. WOODWARD, a witness on behalf of the complainant, being duly sworn, testified as follows:

My name is William R. Woodward; occupation, lawyer and examiner of titles. I have been a member of this bar for 48 years, and have resided in this District all my life.

By Mr. EDWARDS:

Q. Do you know Sarah Utermehle, the complainant in this suit?
A. I do.
Q. You are a defendant herein, as trustee, are you?
A. Yes, sir.
Q. Your codefendant, Leroy M. Taylor, do you know him?
28 A. Very well, sir.
Q. Does he live in this city?
A. He does.
Q. He has lived here how long?
A. I do not know. About thirty or forty years.
Q. What relation does he bear to Mrs. Sarah Utermehle?
A. He is her son-in-law.
Q. Do you know the defendants MacGreal or either of them?
A. I know them when I see them.
Q. When and under what circumstances have you seen these defendants before today?

Mr. ELLIOTT: If it is intended in any way by that question to introduce any evidence tending to show what the defendant William P. MacGreal may have said or done in the absence of his wife, I object until the authority of the wife is shown in Mr. MacGreal so to act.

A. Mrs. MacGreal called in my office once or twice with her mother—she said she was her mother.
Q. What did she call for and what occurred?
A. I really do not know, except she called on one occasion about the balance which was due on the loan, she supposing there was one hundred and twenty or thirty dollars, when I showed her I paid the insurance, which only left some ninety dollars, as I explained to her.
Q. That is one occasion; can you give any other?

A. I think there was an occasion before that—something about how the matter was getting along.

Q. I am endeavoring to fix the number of times, if you can recollect, that you met Mrs. MacGreal concerning the loan by
29 Mrs. Utermehle, the subject of controversy in this suit?

A. Well, I do not exactly recollect more than twice.

Q. On those occasions she called to see you in your office?

A. Yes, sir.

Q. Where was your office at that time?

A. In the Gunton building, No. 472 Louisiana avenue, where it is now.

Q. You are familiar with the circumstances of the negotiation of this loan?

A. I think I am.

Q. For whom, if any one, did you act in the negotiation of this $8,000 loan?

A. I only acted, so far as the examination of the papers, &c., was concerned, for Mrs. Utermehle. When she paid me over the money I then was acting, as I understood, for Mrs. MacGreal, as far as the money was concerned.

Mr. ELLIOTT: I object to what the witness understood. He can state what instruction, if any, he received from Mrs. MacGreal.

Q. Look at the check I now hand you and tell me if you identify it, and, if so, what relation it bears to the loan to the defendant Mrs. MacGreal, the subject of controversy in this suit.

(Paper handed witness.)

A. This is the check sent to me by Mrs. Taylor, who is the daughter and agent, as I know, under a power of attorney for Sarah Utermehle, and it was to be paid over—I was to disburse the money; that was the authority I had from Mr. Rawlings, who had made application for the loan and made the loan with Mrs. Uter-
30 mehle for Mrs. MacGreal, then Mrs. Moore.

Q. Is that your endorsement on the back of that check?

A. Yes, sir; I deposited the check.

Mr. EDWARDS: This check is given in evidence, marked Complainant's Exhibit "A."

Q. Look at the two checks under date of October 22, 1889, and numbered 183 and 184, on the Central National Bank of Washington City, and tell me who drew and signed those checks.

A. I drew them up and signed them.

Q. I also hand you two promissory notes, one made by H. C. Porter, to the order of William Brough, dated March 8, 1886, payable in two years, with six per cent. interest, for $1,250, and another dated September 3, 1887, for $1,600, made by Robert E. Moore and Carlotta M. Moore, payable on or before September 3*d*, 1888, to the order of Henry C. Porter. Tell me what connection or relation the two checks that I have just handed you bear to these two notes.

A. (After examining checks and notes.) They were to pay these notes, one of them to the National Bank of Washington and the other to Henry C. Porter.

Q. What, if anything, had those notes to do with the property involved in this suit?

A. The note of Henry C. Porter was a trust on the property previous to the buying by Mrs. Moore and husband—Mrs. Moore—and that, with the interest and all, made up the amount and we had to pay that to relieve it of a prior encumbrance, and the other was to pay the note of Mrs. Moore to Henry C. Porter. It was part of the purchase-money when they bought of Porter.

31 Q. Do I understand you that both of these notes were secured by deeds of trust on the property at the time this loan was applied for?

A. Yes, sir.

Mr. EDWARDS: These two notes and checks are given in evidence, marked Complainant's Exhibits "B," "C," "D," and "E."

Q. Since these notes were taken up have you held possession of them?

A. I have, sir.

Q. I hand you a letter dated December 5, 1889, purporting to be signed by Carlotta M. Moore. Do you recognize that letter; and, if so, was it ever in your possession?

A. Yes, sir (after examining letter).

Q. You recognize the handwriting?

A. I recognize the handwriting, but she acknowledged this to me when she came in to me on one of those visits that she had given this order and she accepted it.

Q. When you say "she" do you mean the defendant Mrs. MacGreal?

A. I do.

Q. At this time she was Mrs. Moore?

A. Yes, sir.

Mr. EDWARDS: This order is given in evidence, marked Complainant's Exhibit "F."

Q. I hand you another letter, dated April 28th, 1890, purporting to be signed by Carlotta M. MacGreal. Do you identify that letter; and, if so, did you ever have it in your possession?

32 A. (After examining letter.) I recognize that letter. She spoke to me about this note and the insurance afterwards.

Q. When you say "she" do you mean Mrs. MacGreal?

A. Yes, sir; I mean Mrs. MacGreal.

Mr. EDWARDS: This letter is given in evidence, marked Complainant's Exhibit "G."

Q. This letter refers to a certain balance of $93.01 as in your hands and instructs you to hold it until you hear from the writer. Had you, previous to that letter, forwarded to the defendant Mrs. MacGreal a statement of your application of the $8,000 loan by

Mrs. Utermehle, as shown by the check, Complainant's Exhibit "A," given in evidence?

A. I had.

Q. Look at the paper I now hand you and tell me if that contains a correct statement of your application of this $8,000 we are speaking of.

A. It does, sir (after examining paper).

Q. Look at the paper I now hand you and state whether or not that contains a correct account of your application of this $8,000.

A. (After examining paper.) It does, sir.

Mr. EDWARDS: This paper is given in evidence, marked Complainant's Exhibit "H."

Mr. ELLIOTT: I object to that because it is not shown when, by whom, or how it was made up, or that the witness is able to state, and if from books the books are the best evidence.

Q. Were the moneys represented under the head of disbursements in this paper paid out by you or applied as stated?

A. Every dollar of it, sir.

33 Q. I observe under the date of December 7, 1889, the following item: "J. G. Meyer, architect, on C. M. Moore's order, $175.00." Please state what relation, if any, this item has to the order or letter from Mrs. MacGreal, then Moore, being Complainant's Exhibit "F."

A. It is the amount paid on this order.

Q. I hand you a receipt dated December 7, 1889, and a check of the same date for $175. Please state whether you identify them and if that is the receipt and check representing this $175 item.

A. (After examining papers.) That is the receipt of the $175 paid to the architect under Mrs. MacGreal's order, and this is the check to him for the amount which he receipted for.

Mr. EDWARDS: This check and receipt are given in evidence, marked Complainant's Exhibits "I" and "J."

Q. I hand you six orders or certificates purporting to be signed by J. G. Meyer. Examine them and tell me what relation they bear to this loan and what they represent.

A. (After examining papers.) These are the six orders from the architect stating the progress of the work and the order for me to pay the contractor, and on the back of each order I took the receipt of the contractor and gave him a check for each order as it was presented.

Q. I hand you six checks on the Central National Bank of Washington City. Examine them and tell me what connection they bear to these orders and payments to this builder, Meyer.

A. (After examining checks.) These checks represent the payments of these different orders, one for each order.

34 Mr. EDWARDS: These six orders, receipts, and checks are given in evidence, marked Complainant's Exhibits "K, L, M, N, O, P, Q, R, S, T, U, and V."

Q. I hand you four other checks on the Central National Bank of Washington City and ask you whether or not they represent payments made by you from this $8,000 itemized in this statement marked Exhibit "H."

A. They do.

Mr. EDWARDS: These four checks are given in evidence, marked Complainant's Exhibits "W," "X," "Y," and "Z."

Q. I also hand you a tax bill for $13.61. What connection has that bill with the item of taxes on this statement?

A. (After examining bill.) That is the bill that I paid for these taxes.

Mr. EDWARDS: This bill is given in evidence, marked Complainant's Exhibit "Z" 2.

Q. Explain, if you can, the trouble about the insurance which you have spoken about and as also referred to in Mrs. MacGreal's letter to you of the 28th of April, 1890.

A. The builder's risk was just expiring and Mr. Rawlings, as her agent, insured it for the time of the loan, and I gave him a check for $40 for that insurance. Mrs. MacGreal came down and said it was all right to insure, but she did not know whether Mr. Rawlings, her agent, should have insured for the whole of the five years. This she stated because she thought that there ought to have been more than $93.01 in my hands.

Q. Mr. Woodward, you speak of the period of insurance being the same as the time of the loan. I wish to refresh your recollection. The loan is for three years, the insurance was five years. Was it not a complaint by Mrs. Moore that the insurance was longer even than the loan—was not that the trouble?

A. Well, the trouble was that it was insured too long. I had forgotten about the length of the loan, but the trouble was that it was too long; that Mr. Rawlings ought not to have insured so long.

Q. And you explained to her as to the insurance?

A. Yes, sir.

Q. You spoke of Mr. Rawlings as her agent. What is his name?

A. Frank T. Rawlings; that is my impression.

Q. During the negotiation of this loan you acted as the attorney for Mrs. Utermehle and her daughter and agent, Mrs. Taylor. Who acted for the defendant Mrs. MacGreal throughout the transaction?

A. Mr. Frank T. Rawlings. He negotiated the loan and came to me and notified me of the loan, and then the check was sent down to me.

Q. When the application was made for this loan as presented by Mr. Rawlings, what was the condition of the title as asserted by him to you at the time the application was made?

Mr. ELLIOTT: Asserted by Mr. Rawlings, you mean?

Mr. EDWARDS: Yes, sir. What was his statement as to the title and what the security was to be and the condition?

Mr. ELLIOTT: I object, then.

A. Mr. Rawlings came to me and stated that he had gotten a loan for Mrs. Moore on her house on 19th street, lot 49 in the subdivision of square 111, and that the money was to be paid to me; that there were two deeds of trust on the property, and that the check would be sent to me by Mrs. Utermehle, and that I was
36 to pay all the indebtedness and the taxes and commissions and then to pay the money on the building of the house, as the architect should say.

Q. Was there any improvement on the ground at the time of this negotiation?

A. That I do not know, sir. I never was up to the house, and Mr. Rawlings never said anything about it.

Q. What was stated by Mr. Rawlings about Mrs. MacGreal's building on the premises?

(Same objection.)

A. That she was going to build on the premises out of this money and wanted me to retain the money and pay out of it.

Q. Was not that the condition of the loan, that the house was to be built and paid for out of this money?

A. Yes, sir; entirely, and to be paid for out of this money.

Q. State whether or not any representation was made as to the title being in Mrs. Moore, and whether the security was to be a first deed of trust on the property or not.

Mr. ELLIOTT: I again object.

A. Oh, certainly. We were to have the first deed of trust.

Q. You examined the title?

A. Yes, sir.

Q. And what did you find; that the title was in her?

A. That the title was in her, subject to those two deeds of trust and the taxes.

Q. Have you the original $8,000 note, representing this loan, in your possession?

A. Yes, sir; I have (handing note to counsel).

37 Q. On whose account do you hold it?

A. I hold it for the complainant, Mrs. Utermehle.

Mr. EDWARDS: This note is marked to identify Complainant's Exhibit "*a a*," and a copy thereof is filed and given in evidence and to have the same effect as if the original was produced and proven, with the understanding that the original will be produced when desired at the hearing and hereafter proven. This copy is marked Complainant's Exhibit "*a a*."

Q. I also hand you another letter, dated April 21, 1890, purporting to be signed by Carlotta MacGreal, late Moore. Do you recognise that letter and did you receive it?

A. (After examining letter.) I recognise this letter. I received it. It is one of the grounds on which I paid the fire insurance.

Mr. EDWARDS: This letter is given in evidence, marked Complainant's Exhibit "*b b*."

Cross-examination.

By Mr. ELLIOTT:

Q. For how long a time have you been counsel for Mrs. Utermehle?

A. Well, I have been acting for her ever since Mr. Utermehle's death. I mean counsel about loans as I was Mr. Utermehle's for—well, I don't know—a good many years before his death.

Q. About how long has he been dead?

A. I cannot tell as to dates.

38 Q. Well, has he been dead five years?

A Oh, no.

Q. You have testified that you were counsel for Mrs. Utermehle since her husband's death in the matter of loans. What do you mean by that?

A. What I mean by that is that very likely Mrs. Utermehle, when they were going to make a loan, they would ask me to certify the title and disburse the loans.

Q. Your employment did not extend beyond seeing that the title and security were all right?

A. Oh, yes; to disburse the money.

Q. You did not have Mrs. Utermehle's money to disburse here? Did she have any recognised agent here?

A. Well, I do not know. I suppose Mrs. Utermehle's daughter, Mrs. Taylor, was her agent.

Q. Did she have any recognised attorney here as her agent?

A. I do not know about that.

Q. About how many loans has Mrs. Utermehle made through Mr. Frank T. Rawlings?

Mr. EDWARDS: That is objected to as immaterial.

A. Well, I do not know. I have not posted my mind about that.

Q. Can't you approximate it?

(Same objection.)

A. No; I cannot.

Q. Well, there was more than this one?

(Same objection.)

A. I do not say I negotiated every loan of hers, or, rather,
39 disbursed every loan of hers, and I think Mr. Rawlings has gotten another loan, but I do not know. I do not remember.

Q. Is it not true, as a matter of fact, that Mr. Rawlings has made several loans for Mrs. Utermehle of the size of the loan you have here and in each of those cases you have seen that the security was ample for Mrs. Utermehle?

(Same objection.)

A. I never looked at the security; I passed upon the title and the disbursing of the money.

Q. Well, who did look to the security?

A. Well, I do not know; I suppose she or her family or some one else.

Q. You have testified that Mr. Frank T. Rawlings was the agent of Mrs. MacGreal. Do you know that fact?

A. Well, she told me so.

Q. Did she tell you that Mr. Frank T. Rawlings was her agent?

A. Yes, sir.

Q. When?

A. When she came in to see me, and her letters speak of that fact.

Q. When did she say to you that Mr. Rawlings was her agent?

A. When she was in the office—that he was her agent as to this money; not a general agent.

Q. And when Mr. Rawlings came there he said, as I recollect your testimony, that he has secured this loan from Mrs. Utermehle and that you should disburse the money?

A. Yes, sir.

40 Q. Now, since that time and when she first called, as you have stated, had you seen Mrs. MacGreal?

A. No, sir.

Q. Now, at that time you acted as the attorney and officer of Mrs. Utermehle?

A. I acted to disburse this money, as was agreed upon by her and Mr. Rawlings.

Q. Well, did Mr. Rawlings represent her in any way—Mrs. Utermehle?

A. No, sir.

Q. Who brought you Mrs. Utermehle's check?

A. He never brought it; I think Mrs. Taylor.

Q. When was that check brought?

A. About its date. I refer now to Complainant's Exhibit "A."

Q. What was the date of this transaction, Mr. Woodward?

A. Well, Mr. Elliott, I cannot tell the dates unless you let me look at the papers. It was about the date of that note.

Q. That check bears date October 11, 1889?

A. Yes.

Q. And was paid October 12th, it looks like?

Mr. EDWARDS: October 22d; that is the date it was closed.

Q. Paid by the bank October 12. Now, when was the transaction closed?

A. How do you mean closed?

Q. I mean the deed of trust given and this note purporting to be signed by Mrs. MacGreal for $8,000.

A. Well, I cannot tell the date, Mr. Elliott. The paper will show for itself and the trust will show for itself.

41 Q. Independent of what is disclosed by the land records, you have no recollection as to dates?

A. I have no recollection except that it is in November some time.

Mr. EDWARDS: November! You mean October.

Q. You examined the title?

A. Yes, sir; and after the title was examined these deeds of trust were to be taken up and the taxes were to be paid.

Q. By whose authority did you retain the proceeds of this loan? I mean direct authority.

A. Well, Mrs. Utermehle and Mr. Rawlings, if I understand what you mean by direct.

Q. Yes, sir. And you disbursed the proceeds of that loan under an arrangement made by Mrs. Utermehle and Mr. Rawlings and you?

A. No, sir. I made no arrangement. They agreed upon the loans themselves.

Q. That is, Mrs. Utermehle and Mr. Rawlings agreed?

A. Yes, sir.

Q. I observe here a check to the order of William F. Mattingly for the sum of $4.10. Will you tell me whether or not that is Mr. Mattingly's endorsement on that check and whose were the endorsements below it?

A. It is endorsed by Mr. Mattingly; it is his handwriting; and then it is endorsed by Mr. Williams, the deputy clerk.

Q. That is the cost in the suit——

A. The cost in a suit that she had instituted to restrain the sale.

Q. Of what property?

42 A. Of this property, I believe.

Q. When was that suit instituted, if you know?

A. I cannot tell you when it was instituted now. It was there on the docket, and I required it to be dismissed before the loan was made.

Q. You knew, then, at the time of the making of this loan of the existence of that suit—that there was a suit there?

A. Yes, sir.

Q. That was the case of Moore *vs.* Porter, was it not?

A. Yes, sir. The papers were out, and I could not see what it was for. I could not see what the suit was for, but the suit was there, and I had it dismissed.

Q. The only knowledge you had of the suit, then, was upon the face of the docket?

A. Yes, sir.

Q. And you knew of the existence of this suit previous to the making of this loan?

A. I do not know what you mean by making the loan. The loan was in my hands at the time. The money, as I told you, was sent to me directly before I made the examination.

Q. Before you made the examination?

A. While I was about making the examination.

Q. Well, that check is dated October 11, and the transaction was closed on October 22, according to Mr. Edwards.

Mr. EDWARDS: That is the date of the trust.

Mr. ELLIOTT: What date was it recorded?

Mr. EDWARDS: On the 22d. It is dated that day and recorded the same day.

43 Q. Now, at that time you knew by an examination of that title that there was a suit of Moore *vs.* Porter, No. 11828, pending in the equity court?

A. There was an equity suit in the equity court, but I cannot say what for. I have repeated that three times now.

Q. Well, now, in the matter of this disbursement, what arrangement was made as to who should draw the money from you from time to time?

A. The money was in my hands and I did not know anything about it until Mr. Rawlings came to see me. The architect was to give me orders and I was to pay the orders on the statement of the architect—four of $800 each and two of $600 each—which I was to pay on presentation and which I did.

Q. During this time what conversation, if any, did you have with Mrs. MacGreal about it?

A. Well, Mrs. MacGreal was in there twice, I remember—certainly twice—and once we spoke about the orders she had given to pay the architect $175.00. We talked about that and I do not know what other conversations, and afterwards she came in and spoke about the insurance, which I have already stated.

Q. I observe that your check to the architect is dated December 7, 1889. Had you seen Mrs. MacGreal between the time that Rawlings first called upon you and the date of that check, do you recollect?

A. I do not know. She came in and spoke of that check and said it was all right.

Q. That was after the check had been given?

A. Yes, sir.

44 Q. Now, this matter of insurance has been referred to here. What was said about that by Mrs. MacGreal?

A. All that I stated. I suppose she came in from the fact that I had not but $93.01 in my possession, and I spoke to her then about the insurance which she had written about and she said it was probably all right, but she had been insured too long by Mr. Rawlings.

Q. Did she not at that time ask for how long a period it had been insured?

A. I do not know, sir. I do not know whether she had seen Mr. Rawlings at that time or not.

Q. Have you ever seen the contract alleged to have been made between Mrs. MacGreal and the builder Myers?

A. I think they left that contract with me—Myers did—and he called for it after I had paid this money out, and in that contract were these payments that I was to make.

Q. Is your recollection clear that you had that contract in your possession and paid according to that contract?

A. Yes, sir.

Q. Then that contract was returned by you to Mr. Myers, the architect, afterwards?

A. Yes, sir.

Q. After the 22d day of October when did you render any statement to Mrs. MacGreal for the first time?

A. I do not know, sir. It was prior to that letter there. She states about that in her letter. The statement was rendered between the date of the $40.00 check for the insurance, dated
45 March 31, 1890, and Mrs. McGreal's letter of April 28, 1890.

Q. Now, Mr. Woodward, in the retention of this money for disbursement by you, are we to understand that you acted solely as the agent or attorney for Mrs. Utermehle?

Mr. EDWARDS: That is objected to because already answered.

A. Well, I was to see her rights protected and this money was to be paid in the erection of that house as far as it went.

Q. Well, no duty then devolved upon you to guard the interests of Mrs. MacGreal in regard to that money?

A. I was to pay in accordance with her contract with the architect and which was presented to me by her agent, Mr. Rawlings, as the basis on which I was to act.

Q. Your duty did not include seeing that the architect or builder made proper application of the money?

A. No, sir; I had nothing to do with it. I am not in that line.

Q. You had no personal acquaintance with Mrs. MacGreal previous to this transaction, I suppose?

A. No, sir.

Q. No one except Mr. Frank T. Rawlings acted in any way in behalf of Mrs. MacGreal in this transaction, did they?

A. Well, outside, I suppose not. I had to see as far as—while I was acting for Mrs. Utermehle I wanted to see that the money was properly disbursed for her according to this contract that she had made. Is that the point you mean?

Q. No, sir; I mean, independent of Mr. Rawlings in this transaction, Mrs. MacGreal was not represented by anybody.
46 A. I do not know.

Q. Well, you did not see anybody but Mr. Rawlings?

A. No; I did not. I did not see her but twice with her mother in my office.

Q. Well, did you see her mother previous to the execution of this deed of trust and notes?

A. No, sir; I did not.

Q. Who suggested that the money should be held by you to be paid out in the manner you have designated?

A. Indeed, I cannot tell, sir. I had nothing to do with it and did not want anything to do with it.

By Mr. EDWARDS:

Q. What do you mean by "that you had nothing to do with it" when you disbursed the money?

A. I say I do not know. He is speaking about who suggested the disbursement of the money.

Q. What he wants to know is, who suggested that you hold the money?

A. Well, I do not know. I suppose Mrs. Utermehle suggested that I hold the money, and I am certain of that.

By Mr. ELLIOTT:

Q. You have had the possession of the papers that Mr. Edwards has called your attention to since this transaction, have you?

A. Yes, sir; all except the original $8,000 check and the note; Mrs. Utermehle has had them herself and I obtained them
47 recently for the purposes of this case.

Q. Now, with regard to the $8,000 note, which purports to be secured by a deed of trust. Who are the trustees under that trust, if you know?

A. Leroy M. Taylor and myself.

Q. Has that note been paid?

A. No, sir.

Q. Have you ever been called upon by anybody as the holder of that note to foreclose that trust?

A. Well, I don't know that I have. The note is not due and Mrs. Utermehle has not been very free to sell on default of interest.

Q. Well, the question is, have you (interruption)——

A. Well, no, sir; I have not been called upon to sell—no, sir.

Q. I believe you have testified that Mr. Leroy M. Taylor is a son-in-law of Mrs. Utermehle?

A. Yes, sir.

Q. Did you see him at any time during the progress of negotiating this loan?

A. Well, I don't know whether I did or not—whether he brought that check down, or Mrs. Taylor; I think it is likely she did.

Redirect examination.

By Mr. EDWARDS:

Q. A gentleman is present with Mr. Elliott. Do you identify him as the defendant MacGreal?

A. I do.

48 Q. Did you ever see him in your office?

A. Yes, sir.

Q. Since this loan was negotiated?

A. Yes, sir.

Q. What did he come for; what occurred between you concerning this transaction, or was it concerning this transaction?

A. It was concerning this transaction, but I cannot remember what about.

Q. Did he introduce himself to you in any way as relating to the defendant Mrs. MacGreal?

A. He introduced himself to me as the husband of Mrs. Moore.

Q. Do you recollect his referring to this insurance and speaking to you about that?

A. I have no recollection about that.

Q. Can you say on how many occasions he called at your office regarding this transaction?

A. I do not know, but I think he was there twice; but I cannot swear to it positively how many times he was there, but he was there twice.

Q. You have stated that Mrs. MacGreal's mother accompanied her. Was she always with her when she called, to your recollection?

A. She was once, positively, but I don't know whether she was the other time; but she was once, positively, directly after I paid that order to the architect of $175.00.

Q. Did the conversation between yourself and Mrs. MacGreal, or what you stated as having occurred, transpire in the presence of the mother and in her hearing?

A. I think so.

Q. Did they come together and go together?

49 A. Yes, sir.

Q. Reference has been made to a suit of Moore *vs.* Porter, for which a check of $4.10 to the order of Mr. Mattingly was given and endorsed to the clerk. State whether or not at the time of the negotiation of this loan or at the time it was closed and the money received from Mrs. Utermehle by you, as you have stated, you had any knowledge or notice of the contents or object of that suit, except what appeared on the docket.

A. Not the slightest.

Q. Did you ever see any of the papers in that case?

A. I never have; no, sir.

Q. Up to this time, I say, have you ever seen any of the papers in that case?

A. I never have; no, sir.

Q. You stated that the papers were out. Do you mean that the papers were out of the clerk's office?

A. That is what I understood.

Q. Up to the time of the commencement of this suit had any complaint been made to you by Mrs. MacGreal or any one representing her of the application of this $8,000?

A. Not the slightest.

Recross-examination.

By Mr. ELLIOTT:

Q. To whom were those papers charged in the clerk's office, if you remember?

A. I do not remember, sir.

Q. Did you make any effort to get those papers?

50 A. I sent up for them, but I did not get them.

Q. You did not know they had any connection with this property?

A. I saw it was a suit by her and I ordered it dismissed. I did not know about them. I saw it was a suit by her against Porter and I saw that Porter was in these deeds of trust and I required that to be dismissed. The papers were not there, but it was a suit between the parties, and that was enough.

Q. You say that Mr. Mattingly was counsel in that case. Did you have any conversation with him as to the character of the suit?

A. No, sir; I had not.

WM. R. WOODWARD.

Subscribed and sworn to before me this 10th day of November, A. D. 1890.

OSCAR NAUCK, *Examiner.*

51 W. REDIN WOODWARD, a witness on behalf of the complainant, being duly sworn, testified as follows:

My name is W. Redin Woodward; residence, this city; I am a member of this bar.

By Mr. EDWARDS:

Q. You are a son of the witness William R. Woodward?

A. Yes, sir.

Q. And you have been a member of this bar how long?

A. Sixteen years, and have lived here all my life.

Q. Do you know the defendants MacGreal?

A. I never met Mr. MacGreal until today, and never saw Mrs. MacGreal until before her late marriage, at the office. I was in an adjoining room. I may have spoken to her when she first came in.

Q. When you mention the office do you mean your father's office?

A. Yes, sir.

Q. Was that subsequent to the loan?

A. Yes, sir; it was subsequent to the loan; the loan was closed.

Q. Do you know whether the defendant Mrs. MacGreal had any property in her own right other than that involved in this suit?

A. Nothing that I could find of record at that time.

Q. Did you attend to any portion of the mechanical work of examining the record for the purpose of ascertaining the con-

52 dition of the title of this property?

A. I attended to a portion of it at least.

Q. Did you observe the docket entry concerning what is known as the Moore-Porter suit?

A. Yes, sir.

Q. What was that—a suit in equity or at law?

A. A suit in equity.

Q. What was shown by that suit?

A. The docket entry showed the names of the parties to the suit,

and that the case was still pending to restrain a sale under a deed of trust. The papers were withdrawn from the clerk's office, and, to the best of my recollection, without a receipt; the attorney's name was Mr. Mattingly. My recollection is that I made application to Mr. Mattingly of the papers, but did not obtain them. I saw Mr. Rawlings and said we could not go ahead without the dismissal of that suit, and he said that would be all right. At that time the papers were not in the office. We tried to get them from him, but I do not know whether he had them or not.

Q. Had you or any one in your office knowledge or information of the averments in the bill or of the facts contained in the proceedings in that case?

A. None whatever.

Q. This check for $4.10 to the order of Mr. Mattingly, included in the items of disbursements, had as its object what?

A. This order of dismissal.

Q. You mean the clerk's costs?

A. Yes, sir.

Q. Who took that to Mr. Mattingly?

A. Mr. Frank T. Rawlings.

53 Q. Who was Mr. Frank T. Rawlings representing in this transaction?

A. Well, as I understood, he came into the office for Mrs. Moore. I spoke to him in regard to this suit as her agent. I did not know her at all.

Cross-examination.

By Mr. ELLIOTT:

Q. Did you make any inquiry as to the character of this suit of anybody?

A. I asked Mr. Rawlings.

Q. Did he tell you what the character of the suit was?

A. Well, as I recollect, he did not. He said he would see that that suit would be all satisfactorily settled.

Q. You mean you made no other inquiry?

A. No, sir.

Q. The docket did show an entry relating to the sale or attempted sale of the property involved in this suit, did it not?

A. I think it did.

Q. You and your father are engaged in business together as attorneys?

A. We were at that time. There was no partnership between us, however. We acted one for the other, though.

WM. REDIN WOODWARD.

Subscribed and sworn to before me this 10th day of November, A. D. 1890.

OSCAR NAUCK, *Examiner.*

54 FRANK T. RAWLINGS, a witness on behalf of the complainant, being duly sworn, testified as follows:

My name is Frank T. Rawlings. I have resided in this city 38 years. My present occupation is secretary of the Arlington Insurance Company and I am a licensed real-estate agent. I have been so occupied and engaged in the real-estate business for about two years.

By Mr. EDWARDS:

Q. I hand you a deed of trust purporting to be executed by Carlotta M. Moore to the defendants William R. Woodward and Leroy M. Taylor.

Q. Did you see the deed of trust executed?

A. I did.

Q. Who took the acknowledgment thereto?

A. I did.

Q. Were you a notary public at that time?

A. I was and I am still.

Q. Do you identify the lady present as the party who executed that deed of trust?

A. I do.

Q. Do you know her now as Mrs. Moore or by any other name?

A. I have been informed that she has since married a gentleman by the name of MacGreal, whom I have never seen to know.

Q. You saw her sign that deed of trust?

A. Yes, sir; I carried that paper to her and saw her sign it.

Q. You know her signature?

55 A. Yes, sir.

Q. You have seen her write it?

A. Yes, sir.

Q. Look at the signature to this note for $8,000 and tell me in whose handwriting is this signature, "Carlotta M. Moore."

A. That is her signature.

Q. The party who signed this deed of trust?

A. Yes, sir.

By Mr. EDWARDS: This original note and deed of trust are now given in evidence, marked Complainant's Exhibit- "*c c*" and "*d d*," with the understanding that the original note may be retained, as heretofore agreed to, a copy being substituted in its place.

Q. What had you to do with this loan represented by this note and deed of trust which I have just shown you?

A. Mrs. Moore, in company with her mother, Mrs. Burke, I believe, came to my office prior to the date of the note for the purpose of negotiating a loan. She made application for a loan of $8,000. She informed me that she was the owner of a certain lot on the west side of 19th street between Q and R, I think, and that upon that lot there were two notes, held by two different people; outside of that there were no other encumbrances; that the title was vested in her in fee-simple, subject to those two trusts. She said that she

had employed an architect and that the plans and specifications were then ready for the construction of a house to cost, as near
56 as I can recollect, about the sum of the loan—$8,000. I negotiated the loan with the understanding that out of the proceeds of the loan the money would be disbursed by an attorney of Dr. Leroy M. Taylor, first, for the payment of the outstanding notes secured by deed of trust upon the property, and, second, upon an order of the architect during the course of construction of the house she then contemplated erecting.

Q. You spoke of negotiating the loan. When you say "negotiating" you mean you applied for a loan of Dr. Taylor?

A. I applied for a loan from Dr. Taylor for Mrs. Carlotta Moore for three years, I think it was.

Q. And what was done by Mr. Taylor in the matter and what did he say to you afterwards concerning it?

A. The data was given to him by me. He made an examination and in due course of time the application was approved. Mrs. Moore was notified; the deed of trust was prepared, executed, and delivered.

Q. You learned who the party was loaning the money?

A. Yes, sir.

Q. Who was it?

A. Mrs. Utermehle.

Q. What relation was she, do you know, at the time to Dr. Leroy M. Taylor?

A. Well, I knew before that she was his mother-in-law, but I did not know Mrs. Utermehle and never have seen her.

Q. In the matter of the negotiation of this loan for whom did you act?

57 A. For Mrs. Moore.

Q. State whether what you did was under authority from her.

A. It was.

Q. State whether or not this encumbrance on the property was paid off, to your knowledge.

A. They were paid off by me.

Q. You took the checks from Mr. Woodward, did you, to the parties?

A. Yes, sir; I did.

Q. *You* you remember any condition accompanying the negotiations of the loan as to insurance on the building about to be constructed?

A. Yes, sir; I told Mrs. Moore that when the house would be insurable that it would be necessary, in order to secure the loan, that she first secured a builder's risk. Upon the completion of the house she was to insure for the full amount of the loan. She complied with the terms.

Q. It appears that the policy was taken out for five years instead of three years?

A. That was explained to her mother and to Mrs. Moore satisfactorily, I hope. I explained to her the advantages. She would save

a whole year's premium in taking out a five-year policy and half a year in taking out a three-year policy.

Q. Have you any personal knowledge concerning the disbursement of this money by Mr. Woodward to the architect or the contractor—did you have anything to do with that?

A. No, sir; nothing whatever.

58 Q. State whether or not you had authority from Mrs. Moore, now Mrs. MacGreal, as to informing Mr. Woodward concerning the disbursement of this money for the construction of the house—the method in which it was to be disbursed.

A. That was by me explained to her, with the suggestion that she see him in person and make a better explanation—authoritative.

Q. Look at the items included under that of disbursements, Mr. Rawlings, in the statement referred to in the testimony of Mr. Woodward, Exhibit "H," in connection with the checks that I produce, and tell me whether from your own knowledge the disbursements are correct down to and including the sum of $4,708.01, and also the additional item of $40.00 for insurance at the bottom.

A. (After examining checks and statement.) It is correct, sir.

Q. Do you identify the two checks marked Complainant's Exhibits "C and B" as the ones given by you to Mr. Woodward to take up the two deeds of trust that were on the property as reported by Mrs. Moore?

A. I do, sir.

Q. Did you go to look at this lot? Do you remember going in person to see it?

A. Not before the house was commenced.

Q. Did you go there after it was commenced?

A. Yes, sir.

Q. Did you see the building in course of construction?

A. Yes, sir, and went through it.

Q. You placed a builder's risk on it, did you?

59 A. Yes, sir.

Q. And afterwards placed an insurance policy?

A. Yes, sir; for the term of five years.

Q. Look at the policy I now hand you and tell me if you identify that as the one.

A. I do, sir.

Q. In the body of this policy I find the following: "Loss, if any, payable to William R. Woodward and Leroy M. Taylor, trustees, as interest may appear." State upon whose authority that provision was made in the policy.

A. Mrs. Moore's, at the time the loan was made.

Q. By whom was this money to be held and disbursed as to taking up the two encumbrances we have referred — and afterwards to apply on the building?

A. By Mr. William R. Woodward.

Q. At the time this negotiation was made the examination of the title disclosed a suit between Mrs. Moore and one Porter. Do you remember taking a check to Mr. Mattingly for the purposes of pay-

ing the costs and having that suit dismissed and gotten out of the way?

A. My recollection is that I went to see Mr. Mattingly for the purpose of ascertaining the costs in a certain suit, the nature of which I was not acquainted with at that time, and I failed to see him. It was settled with Mr. Mattingly through Mr. Woodward subsequently.

Q. Do you remember taking a check there?

60 A. I do not think I took the check; I may have done so, but my recollection is that I did not. I went for the purpose of taking the check, but did not see him.

Q. Do you know what was the object of the suit or the averments in the bill of complaint?

A. No, sir.

Q. State whether or not Mrs. Moore informed you when she applied for this loan concerning the improvement whether there were any improvements or not upon it.

A. She informed me that there was no improvement on it; it was a vacant lot, situated between two houses, and she had the use of two party walls, and, if my memory serves me, they were already paid for; she was entitled to the use of the party walls; that is my recollection. When Mrs. Moore made arrangements to get this loan of $8,000 the cost of the building was to be of that amount, and I asked her what provision she had made for raising sufficient funds to pay off the note. She said she owned other property, and would realize on that to pay off the difference.

Q. You knew nothing about her property at that time?

A. No, sir; I did not know what property she had reference to.

Q. At the time this loan was closed and Mrs. Utermehle advanced this money for the purposes stated, had you any notice or knowledge of any infirmity in the title of the property at all?

A. None whatever, sir.

Q. State whether or not, as the agent of Mrs. Moore, you applied to Mrs. Utermehle or her agent, Mr. Taylor, for this loan of money upon the assurance of a good title and to be free of encumbrance or to be taken up as you have stated.

61 A. I thought I had made that clear.

Q. Well, now I ask you specifically; perhaps you covered it?

A. I did.

Q. And you received this assurance from Mrs. Moore, did you?

A. I did, sir.

Cross-examination.

By Mr. ELLIOTT:

Q. Can you tell us anything in particular that Mrs. Moore said in that regard?

A. Not any more than I have developed in my testimony given here.

Q. Well, by that I understood you to mean simply that you supposed a good title?

A. Upon her assurance. I always invariably asked if the title is good. I ask a party because I do not care to waste my time with defective titles and I act upon the assurance of the owner that the title is good; of course, they may say the title is good when it is not, but that will be developed when examined by the attorney.

Q. Can you tell me what Mrs. Moore said in that regard?

A. Well, it is simply going over the same grounds for me to comply with your request.

Q. Well, then, I guess you will have to travel over the same grounds.

62 A. Well, I will if you wish it.

Q. I am asking if you remember anything specifically.

A. Not anything more than what I have stated.

Q. Do you recollect anything being said in regard to the title, one way or the other, between you and Mrs. Moore, as to the fact that she stated she owned this property on 19th street?

A. She assured me that she owned a certain piece of property on 19th street between Q and R. I think that upon that property was one or two notes; that she owned the property; the title was good, subject to those two notes, and she wanted to borrow $8,000 upon it for the purpose of constructing a house, the money to be disbursed by Mr. Woodward and the notes to be paid off and the money advanced in reference to the construction of the building upon the orders of Mr. Meyers, the architect.

Q. All those statements were not made to you, of course, in one conversation?

A. They were made to me in the first interview I had with the lady.

Q. Well, you said that Mr. Woodward was to disburse the money?

A. No, sir; that was afterwards.

Q. Now, then, you went to Mr. Taylor and he agreed to loan $8,000 upon the property?

A. Yes, sir.

Q. Was it not his suggestion that the money was to be retained by Mr Woodward?

A. Yes, sir.

Q. Did you communicate that fact to Mrs. MacGreal?

63 A. I did.

Q. How long afterwards?

A. Immediately. Of course, when I act I act quickly.

Q. Before the execution of that deed of trust?

A. Yes, sir.

Q. Now, then, I would ask you whether or not Mr. Woodward had in his hands at that time $8,000.

A. Before the execution of the trust?

Q. Yes, sir.

A. He did, sir.

Q. Was Mrs. MacGreal present when this transaction was actually

closed? I mean by the delivery of the $8,000 note and the deed of trust.

Mr. EDWARDS: Do you mean personally or by her agent?

Mr. ELLIOTT: No; personally.

A. I am in doubt, Mr. Elliott. My impression was, though, that the lady saw Mr. Woodward. That is my impression, or she may have just turned it over to me as her agent, and I delivered them to Mr. Woodward. I am in doubt as to that. I have made so many loans since that my memory is not fresh on that point.

Q. Mr. Taylor was the agent of Mrs. Utermehle?

A. He was acting for his mother-in-law.

Q. I would ask you to look at Exhibit "A" and say in whose handwriting the signature to that check is.

A. I do not know that I ever saw that check before, and I do not recognise the handwriting of it.

Q. Was not Mr. Taylor or Mrs. Rose M. Taylor clients of yours previous to this time?

A. No; I should not say that they were. I should rather say that I was a customer of theirs.

64 Q. Did you not loan money for Mrs. Utermehle previous to this time?

A. I loaned money for Dr. Taylor.

Q. Well, that was Mrs. Utermehle's money, wasn't it?

A. I do not know. I never saw Mrs. Utermehle. I have never seen her in my life.

Q. Is it not a fact that Mrs. Utermehle is a lady of advanced age, and that the business is attended to by her daughter and son-in-law?

A. I have never seen the lady. I knew her husband before he died.

Q. How long have you known Dr. Taylor?

A. Well, I have known Dr. Taylor for possibly fifteen years, but I have never had any business relations with him for more than two years.

Q. Well, in loaning this money, you say, for Dr. Taylor, do you remember to whom the notes were made payable? I refer to cases outside of this loan.

Mr. EDWARDS: That is objected to.

A. Well, now, in making loans for Dr. Taylor, sometimes he would say the money was from his mother-in-law, sometimes from his servant, and sometimes for a friend—for various purposes. I remember for a long time I wanted to invest $1,500 for one of his servants, but I remember I did not make the investment.

Q. Can you state, previous to this transaction for Mrs. Moore, how many investments you made for Dr. Taylor?

(Same objection.)

A. I cannot say; two or three. I have not made many loans for the Doctor or with the Doctor.

Q. Is your recollection entirely clear that you communicated to Mrs. MacGreal the fact that Mr. Woodward was to handle
65 this money previous to the transfer of her note of $8,000 as the attorney for Mrs. Utermehle?

A. Not to Mrs. MacGreal, but to Mrs. Moore.

Q. Well, how long before that time, under what circumstances, and where?

A. Oh, I presume a week or two, either in the office of the Arlington Insurance Company or in the parlor of the residence of her mother, Mrs. Burke.

Q. Can you not fix definitely when or where it was?

A. I cannot, because Mrs. Moore with her mother would frequently come up to my office and not find me in, and when a lady comes up to my office and does not find me in I make it my business to find her if I want to see her on business.

Q. Then you are clear that you did communicate to the defendant MacGreal the fact that Mr. Woodward was to disburse this money?

A. Yes, sir.

Q. Did you communicate this fact also to the defendant's mother or to the defendant in the mother's presence?

A. I do not know that I did. The fact was communicated, however, to Mrs. Moore. I had nothing to do with her mother.

Q. I asked you when and where you communicated the fact to Mrs. Moore, if you can state.

A. Well, I said in the office of the Arlington Insurance Company or in the parlor of her mother, Mrs. Burke.

Q. You are not positive, however, which place it was?

A. No, sir.

Q. Do you know whether her mother was present when you made this *ate*tement to Mrs. Moore that Mr. Woodward was to act?

A. I do not.

66 Q. What is your best recollection about it?

A. I would not care to express it.

Q. For what reasons?

A. It is a blank.

Q. By whom were those papers prepared, the note and the deed of trust?

A. They were prepared, I presume, in the office of Lawyer Woodward; by whom I do not know.

Q. Where were they executed by the defendant Mrs. MacGreal?

A. In Mrs. Burke's residence.

Q. Who else was present?

A. Only Mrs. Moore, I think, and myself.

Q. The papers, I presume, of course, were read over to her before she signed them?

A. Yes, sir; she was conversant with the contents of the papers that I handed over to her to sign, and she signed them, acknowledged them, and handed them back to me.

Q. She was conversant, but how was she?

A. They were read over to her.

Q. Do you recollect the fact that you read them over to her?

A. It is my invariable custom, and I do not think that I varied from it in that instance.

Q. You had no previous acquaintance with the defendant MacGreal?

A. Slightly. I had met her once before and had a few minute-conversation with her.

Q. You had no business transaction with her previous to that time?

67 A. No, sir.

Q. And you knew nothing about this property except what was disclosed by the land records, as to the title?

A. Nothing except the statement of Mrs. Moore, which I have made.

Q. Previous to calling upon Dr. Taylor, did you examine this property yourself?

A. I did not, sir.

Q. Did you examine it subsequently?

A. I did.

Q. Did you report to him the value of the property, in your opinion?

A. No; I left that to him.

Q. Did he examine it, do you know?

A. I think he so reported to me that he had; that was his custom, to examine all securities prof-erred to him. I never examined the property while it was vacant, before the building was commenced.

Q. After the transaction was closed, I presume, of course, you gave Mrs. MacGreal a statement of this transaction?

A. I did, sir.

Q. Did she say anything to you about not being satisfied with that statement at any time?

A. Not at all, sir; she seemed to have the utmost confidence in me and I had in her, and I believe I overpaid her $15.00 and she refunded the money.

Q. What I mean is, did she say anything to you at that time about the disbursement of this money by Mr. Woodward?

68 A. After I negotiated the loan and pocketed my commission and bid adieu to Mrs. Moore, I had nothing to do with it until I heard from her by a note relative to the insurance. She complained to me in this note that I had overstepped the bounds as to the period for which the house was insured—five years instead of three.

Redirect examination.

By Mr. EDWARDS:

Q. Mr. Rawlings, you have been interrogated concerning other transactions with Dr. Leroy M. Taylor, and perhaps through him or Mrs. Utermehle. Have you ever been employed or retained as the agent of either to loan their money?

A. Never.

Q. Who did you represent in the matter of the negotiation of loans that you obtained from Dr. Taylor or Mrs. Utermehle?

A. The applicant.

Q. The borrower of the money?

A. Yes, sir.

Q. Had you any compensation paid you by either Dr. Taylor or Mrs. Utermehle in respect to this transaction?

A. Not a penny.

Q. You knew Mrs. Utermehle, the Doctor, and Mrs. Taylor as people of means and capable of making investments?

A. Yes, sir.

69 Q. And in that way you approached them?

A. I did.

Q. And in that way did you act for Mrs. Moore?

A. Yes, sir.

Q. Was there anything at the time this transaction was closed and the money paid over to Mr. Woodward that affected this property and the security of Mrs. Utermehle on the property?

A. No, sir.

Recross-examination.

By Mr. ELLIOTT:

Q. Mr. Rawlings, by whose authority or direction was this money left in Mr. Woodward's hands?

Mr. EDWARDS: That is objected to as having been already answered.

A. By the joint authority and direction of Dr. Taylor and Mrs. Moore.

Q. Well, was it by the direction and authority of Mrs. Moore or of Dr. Taylor?

A. Dr. Taylor suggested that if he made the loan it would have to be disbursed by his attorney, and I made that known to Mrs. Moore and she acquiesced, and when the deed of trust was executed and note delivered Mrs. Moore authorized and directed Mr. Woodward to disburse the money. Of that I am positive.

Q. In your presence?

A. She made that direction to me; yes, sir. She made that concession or admission to me.

70 Q. Did she instruct Mr. Woodward, in your presence, to disburse that money?

A. She instructed Mr. Woodward through me.

Q. Did she instruct you directly or authorize you to make that arrangement with Mr. Taylor—I mean in so many words?

A. No, sir; Mr. Taylor requested it. Those were his conditions and requirements and I so informed Mrs. Moore, and she, as I said before, acquiesced. She complied with the terms of Dr. Taylor so far as the disbursement of the money was concerned.

Q. By that you mean that she did not object to it?

A. She did not object to it; no, sir.

By Mr. EDWARDS:

Q. I forgot to ask you in my direct examination, and I will recall you for that purpose, whether Mrs. Moore made any declaration to you at the time she applied for this money as to whether the notes that were encumbrances on that property were overdue, or that either of them was overdue, and she was anxious to pay them off.

A. Mrs. Moore told me that those notes could be taken up; that she had arranged with the parties holding them, or that she thought they could be taken up upon the payment of principal and interest up to a certain time. I know that in settling with Mr. Porter I saved Mrs. Moore $15.00 or $20.00 interest. He wanted to charge her up to the expiration of the term and I objected.

Q. And he finally acquiesced in your position?

71 A. Yes, sir.

Q. The check was for the amount of the claim, was it, and then you returned to her the difference?

A. No; I wanted it paid by check, and then I got his statement.

Q. And it was on the computation made by Mr. Porter that you saved this money and returned it to Mrs. MacGreal?

A. Yes, sir.

FRANK T. RAWLINGS.

Subscribed and sworn to before me this 10th day of November, A. D. 1890.

OSCAR NAUCK, *Examiner.*

It is admitted by the defendants MacGreal that the premises in controversy, No. 1612 19th street northwest, *was* taken possession of and occupied by them as their residence in the early part of June, 1890, and that they have continuously occupied this house as their home since.

OSCAR NAUCK, *Examiner.*

72 EDWARD S. RANSDELL, a witness on behalf of the complainant, being duly sworn, was examined—

By Mr. EDWARDS:

Q. I hand you the original writ or subpœna in this cause and ask you if you recollect having it in your possession and of serving it in your official capacity as deputy marshal.

Mr. ELLIOTT: I object to the testimony as entirely incompetent, the return of the marshal on the writ being the best evidence of the return, unless it is proposed to contradict it by this witness.

A. (After examining writ.) Yes, sir; I identify it.

Q. Did you serve it on either of the parties?

A. Yes, sir; I served this writ on this lady now present on the 23d of June, and, about as near as I can come, I think it was about the hour of 1 o'clock.

Q. Did you make any inquiry of her as to the other defendant, her husband?

A. Yes, sir; I asked about her husband, and she told me—I am not positive (interruption)——

Mr. ELLIOTT: I object to what the defendant Mrs. MacGreal may have said to this witness.

Mr. EDWARDS: I say that it is irregular for the counsel to interrupt the witness while answering, and that he can place his objection after the answer.

73 Mr. ELLIOTT: The counsel claims the right to interrupt the witness to make an objection while he is testifying.

A. I think she told me that he worked in the Pension Office, but I would not be positive about that; but it is my impression she said the Pension Office.

Q. Did you go to look for him?

A. Not at that time.

Q. Did you that day?

A. Yes, sir.

Q. Where did you find him?

A. I found him at his house.

Q. Where was that house located?

A. On 19th street between Q and R northwest. I have the number on the other book. I haven't got it here—sixteen hundred and something.

Q. When you went to the house did you ask for any one?

A. In the evening?

Q. When you served Mrs. MacGreal, at 1 o'clock.

A. I rang the bell and waited there a few minutes and the lady looked out of the upper window. I asked if Mrs. MacGreal lived there and she said, "Yes." I asked about Mr. MacGreal, and I think she said he worked in the Pension Office, and then I said I would like to see Mrs. MacGreal, and she asked what I wanted. I told her I had a paper for her, and she said, Put it under the door. I said I could not do that; that I would have to see her, and she came down and I served it on her in person.

Q. Do you recognize this lady as the one (referring to Mrs. MacGreal, who is present)?

74 A. Yes, sir.

Q. Do you recognise her husband as being present?

A. Yes, sir; that is the gentleman (meaning Mr. MacGreal). When I went there he was at the basement window and he saw me coming and he motioned at the window. I stopped going up the steps and I motioned to the door and he came there and I handed him the paper.

Q. Did he make any remarks?

A. I don't remember his remarks. He made some pleasant remark, but I cannot recall his words.

Q. What hour of the day was that?

A. Well, that was, as near as I can recall—it must have been after six o'clock. I had been home and had my dinner. I gen-

erally start home and get my dinner and then go out an- serve after dinner. It must have been after six.

Mr. ELLIOTT: Still reserving the objection heretofore made and giving notice that I move to suppress the deposition, I will ask the witness one or two questions:

Q. The marshal's return on that writ as to service is correct, is it not?

A. Yes, sir; June 23, 1890.

Q. There was nothing extraordinary happened between you and Mr. MacGreal or Mrs. MacGreal in serving that writ?

A. Nothing at all.

Q. You served it in the same manner as you served other persons?

A. Yes, sir.

75 Q. There was nothing peculiar about the case at all, was there?

A. No, sir.

EDWARD S. RANSDELL.

Subscribed and sworn to before me this 10th day of November, A. D. 1890.

OSCAR NAUCK, *Examiner.*

This session was then adjourned to meet on further notice or agreement.

OSCAR NAUCK, *Examiner.*

76 WASHINGTON, D. C., *November* 28, 1890—12.30 p. m.

Met, pursuant to adjournment, at the office of Messrs. Edwards & Barnard, No. 500 5th street N. W.

Present: Messrs. Edwards & Barnard, of counsel, and W. Redin Woodward, Esq., solicitor, for complainant; Charles A. Elliott, Esq., solicitor for the defendants MacGreal, and the defendant Wilburne P. MacGreal and Leroy M. Taylor in person; whereupon—

LEROY M. TAYLOR, a witness on behalf of the complainant, being duly sworn, testified as follows:

My name is Leroy M. Taylor. I reside in this city, and have lived here about forty years. I am by profession a physician. I know Mrs. Utermehle, the complainant in this suit. She is the mother of my wife. I am also one of the defendants in this suit.

By Mr. EDWARDS:

Q. Look at the check dated October 11, 1889, for $8,000, drawn on the Central National bank to the order of William R. Woodward, and tell me in whose handwriting is the body of that check and the signatures thereto.

A. Well, that was drawn by my wife, and she acts as the attorney for her mother, Sarah Utermehle. I carried that check to Mr. Woodward myself and gave it to him.

Q. You say it was drawn by your wife?

77 A. Yes, sir.

Q. The signature, "Sarah Utermehle, by Rose M. Taylor," is in your wife's handwriting?

A. Yes, sir.

Mr. EDWARDS: This check I again give in evidence, and it is marked Complainant's Exhibit "A."

Q. How came that check to be delivered by you to Mr. Woodward, as you have stated?

A. Mr. Frank T. Rawlings came to me in the latter part of September or 1st of October for a loan of $8,000, and represented that loan to be on first-class security, and stated that he was the agent and that he was acting for (interruption)——

Mr. ELLIOTT: One moment, Doctor. I object to what transpired between Mr. Rawlings and the Doctor unless the defendants MacGreal were present.

A. (Continuing:) —and that he was acting for Mrs. Carlotta Moore; that she had a lot on 19th street—a valuable one—and that she proposed to build a house on it; that Mr. J. G. Myers, I think, was the contractor; that she wanted this money to build the house and also to remove some incumbrances that were on the property. I examined the lot, concluded that it was a safe investment, and told Mr. Rawlings that I would get the $8,000 for him, to be put into the hands of William R. Woodward and to be paid out as the improvements progressed, first, of course, in removing the incumbrances on the property; that is about all I know about it. Of course, the representations made by Mr. Rawlings that induced me to examine the lot and make the loan was that it was first-

78 class security; that the property was all right an- that there was nothing wrong about it.

Q. Did you ever visit the lot while the house was being constructed?

A. Yes, sir; I think twice.

Q. In making this examination and in dealing with Mr. Rawlings, for whom did you act?

A. For Mrs. Sarah Utermehle.

Q. The party loaning the money?

A. Yes, sir.

Q. At the time this check was passed to Mr. Woodward and the transaction closed and the money disbursed while the building was being constructed, had you any knowledge or had Mrs. Utermehle or your wife, so far as you know, any knowledge, notice, or information that there was anything irregular or defective concerning the title of Mrs. Moore to this property?

A. No, sir.

Q. Have you the original note representing this loan with you?

A. Yes, sir.

Q. How much interest has been paid on that loan?

A. Mrs. Carlotta Moore came to my house February 5, 1890, and paid three months' interest, to January 22, 1890, $120, to my wife.

Q. Has anything else been paid on that note, either as principal or interest, to your knowledge?

A. No, sir.

79 Q. Did you meet the defendant Mrs. MacGreal, then Mrs. Moore, during the negotiation of this loan?

A. No, sir.

Q. Did you ever meet her afterwards?

A. Yes, sir.

Q. Did she identify herself when she met you in any way as the party who had obtained that $8,000 loan?

A. Yes, sir; she identified herself by stating that she was Mrs. Carlotta Moore, to whom I had made a loan of $8,000.

Q. Did she state through whom?

A. Through Mr. Frank T. Rawlings, and she applied for an additional loan on other property, and I referred her to her agent, Mr. Frank T. Rawlings, stating that I did not act directly with the parties and that she would have to go and see Mr. Rawlings if she wished to make any other loan.

Cross-examination.

By Mr. ELLIOTT:

Q. Your wife is the general agent of Mrs. Utermehle, is she not?

A. Yes, sir.

Q. And you act in these transactions generally for your wife, do you?

A. Yes; and for Mrs. Utermehle.

Q. The money was put into Mr. Woodward's hands for disbursement as the attorney and agent for Mrs. Utermehle?

80 A. Well, I cannot say exactly that he is the agent or attorney for Mrs. Utermehle. He has acted for the family for many years; but the arrangement that I had made was that this money was to go into Mr. Woodward's hands, as I had made arrangements before on other loans, and then it should be disbursed.

Q. It was placed in the hands of Mr. Woodward for disbursement for the protection of Mrs. Utermehle?

A. Why, certainly.

Q. Will you tell us when you saw Mrs. Moore the first time?

A. I cannot give you the date when she came to my office, but it was some time after this loan had been made. I cannot tell you whether it was one month, two months, or three months.

Q. Will you tell us, then, exactly what she said, giving us just as close as you can the precise language she used and how she introduced herself?

A. She stated that she was Mrs. Carlotta Moore, and that she was the party to whom we had loaned $8,000 through Mr. Rawlings, and that she wanted an additional loan on other property; I cannot give the description of the other property, but I told her that if she went to see her agent and he came to me I would make up my mind whether I would give it or not.

Q. Why did you refer her to Mr. Rawlings?

A. Because we did not deal directly with the parties. It is not customary.

Q. When parties apply to you to whom do you generally refer them?

(Mr. EDWARDS: That is objected to as immaterial.)

81 A. Parties generally do not apply to us directly.

Q. Well, when parties do apply to you to whom do you refer them?

A. I have not had any such for a number of years.

Q. When parties apply to you directly to make the loan to whom do you refer them?

(Same objection.)

A. Sometimes I would refer them to Mr. Holtzman and sometimes to Mr. Darneille, parties that I would think of just then.

Q. And sometimes to Mr. Rawlings?

(Same objection.)

A. Yes, sir; sometimes to Mr. Rawlings.

Q. Can you approximate how many loans you made through Mr. Rawlings? I do not want the names.

(Same objection.)

A. Well, now, my impression is that I made two or three loans through him. I would not be positive about that. I know I made more than one.

Q. How often did you visit the building during the progress of the work?

A. Twice.

Q. What was your object in going there?

A. Well, to see how things were progressing.

Q. Do you remember how much money Mrs. MacGreal desired as an additional loan?

A. My recollection is that it was either $500 or $1,500. I cannot tell you positively which.

82 Q. How long have you been acquainted with Mr. Rawlings?

A. For about ten years, I suppose. I have known him a long time by sight and have known him personally, I reckon, for about eight or ten years.

Q. You are the same Doctor Taylor who is named as a defendant in this suit, as trustee under one of the deeds of trust?

A. Yes, sir.

Q. What demand, if any, was made upon Mrs. MacGreal for the payment of any interest on that note that you exhibited here a few minutes ago?

A. I don't know that any demand has been made.

Q. Well, do you know whether there has or not?

A. Not to my knowledge; no, sir.

Q. Well, if there had been a demand would you have known it?

A. I presume I would.

Q. Has any demand been made on you as one of the trustees to foreclose this trust?

A. No, sir. My impression is that when the second quarterly interest was due—I would not be positive about that, but my impression is that she was notified that there was some interest due—probably by my wife—and there was a note received from Mrs. Moore referring us to Mr. William R. Woodward for the second quarter's interest.

(Mr. ELLIOTT: I object to the witness stating the contents of any note sent by his wife to Mrs. MacGreal or the contents of any notes received from Mrs. MacGreal, the notes being the best evidence.)

83 By Mr. EDWARDS:

Q. Never mind the notes; just state what took place, as far as you know.

A. When the second quarterly interest was due my impression is that she was notified.

By Mr. ELLIOTT:

Q. Did you as trustee receive any request or direction from the holder of this note to foreclose this trust?

A. No, sir; I said I had not.

Q. Did you see Mrs. MacGreal more than once?

A. I never saw her but once.

Q. And that was when she called?

A. Yes: that was when she called.

Redirect examination.

By Mr. EDWARDS:

Q. You were interrupted, Dr. Taylor, concerning the contents of the letter that you referred to as having been received by your wife in reference to the quarterly installment of interest due in April last. Look at the letter, dated April 24, 1890, addressed to Mrs. Rose M. Taylor, and purporting to be signed by Carlotta MacGreal, late Moore, and tell me if you identify that as the letter you spoke of.

A. I identify the letter above; that which is in ink is the letter.

Q. Do you remember taking that to Mr. Woodward or of its being sent there?

84 A. No; I don't remember whether I took it there or whether it was sent there.

Mr. EDWARDS: The body of this letter, in ink, is admitted to be in the handwriting of the defendant Wilburne P. MacGreal, and that the signature thereto is that of his wife, the defendant Carlotta MacGreal, and that the same was sent by them to Mrs. Rose M. Taylor, the wife of this witness, at or about its date, and it is given in evidence, marked Complainant's Exhibit "*e e*."

Q. I understand that you informed Mr. Rawlings, as the agent of Mrs. MacGreal, then Moore, that the money representing the loan must be placed in the hands of Mr. William R. Woodward and by him disbursed for the purposes you have mentioned?

A. That I have already stated.

Q. Was that condition agreed to by Mr. Rawlings at the time of or prior to the check having been drawn to Mr. Woodward's order?

A. Yes, sir; if he hadn't agreed to it he would not have gotten the money.

Q. Up to the time that you saw Mrs. MacGreal concerning this other loan that you have mentioned had you received any communication or complaint from her, directly or indirectly, or had your wife or Mrs. Utermehle, to your knowledge, concerning the application of the money by Mr. Woodward or of anything whatever in relation to the negotiation of the loan and the whole transaction?

A. No, sir.

LEROY M. TAYLOR.

Subscribed and sworn to before me this 28th day of November, A. D. 1890.

OSCAR NAUCK, *Examiner.*

85 It is further admitted by the defendants MacGreal that the letter dated April 21, 1890, referred to at the last session by the witness Mr. William R. Woodward and marked Complainant's Exhibit *b b*, was written and signed by the defendant Wilburne P. MacGreal and by him mailed to the witness Woodward at or about its date, and this letter is now given in evidence, marked Complainant's Exhibit "*b b;*" to which offer as evidence the defendants MacGreal, by their counsel, object because in itself it is immaterial, and, secondly, that there is no authority or direction shown from the defendant Carlotta MacGreal to her codefendant MacGreal to write or send such a letter, and this suit is brought against the defendant Carlotta MacGreal involving property alleged in the bill of complaint to be her separate estate.

It is further stipulated and admitted that the witness William R. Woodward prepared and furnished a statement in writing over his signature, dated April 26, 1890, addressed to the defendant Mrs. MacGreal, and mailed the same to her at or about its date; which statement is given in evidence and marked Complainant's Exhibit *f f.*

OSCAR NAUCK, *Examiner.*

86 In the Supreme Court of the District of Columbia.

UTERMEHLE
vs.
MACGREAL *et al.* } No. 12658. Eq.

EXHIBITS WITH COMPLAINANT'S TESTIMONY-IN-CHIEF.

EXHIBIT A. O. N., Ex'r.

No. —. WASHINGTON, D. C., *October* 11, 1889.

Central National bank

Pay to the order of William R. Woodward eight thousand dollars, Carlotta W. Moore loan.

$8,000. SARAH UTERMEHLE,
By ROSE M. TAYLOR, *Att'y.*

[Written across the face:] Central Na., Washington, D. —. Paid Oct. 12, 18—.

(Endorsed:) Wm. R. Woodward. Exhibit A, Oscar Nauck, examiner.

EXHIBIT B. O. N., Ex'r.

No. 184. WASHINGTON, D. C., 22 *October*, 1889.

Central National Bank of Washington City

Pay to the order of the National Bank of Washington twelve hundred and fifty-nine $\frac{17}{100}$ dollars.

$1,259.17. WM. R. WOODWARD.

[Written across the face:] Central Nat'l bank, Washington, D. C. Paid Oct. 23, 1889.

(Endorsed:) Coll. 2893. Col. ac. Nat. Union Ins. Co. Nat. Bank of Washington. Paid Oct. 23, 1889. Washington, D. C.

87 EXHIBIT C. O. N., Ex'r.

No. 183. WASHINGTON, D. C., 22 *October*, 1889.

Central National Bank of Washington City

Pay to the order of H. C. Porter seventeen hundred and thirty-five $\frac{70}{100}$ dollars.

$1,735.70. WM. R. WOODWARD.

(Endorsed:) Frank T. Rawlings. Pay to the order of Metropolitan National bank, Washington, D. C. H. C. Porter. National Metropolitan bank. Paid Oct. 25, 1889. Washington, D. C.

88 EXHIBIT "D." O. N., Ex'r.

Hufty & Dyer, real estate, insurance, stock, and note brokers, 1301 F street N. W., Washington, D. C.

Secured by deed of trust on real estate on —— square.
$1,600.00 due ——, 18—.

WASHINGTON, D. C., *Sept. 3rd*, 1887.

On or before December 31st, 1888, we jointly and severally promise to pay to the order of Henry C. Porter sixteen hundred $_{100}$ dollars, value received, with interest at the rate of six per centum per annum until paid; payable semi-annually. [Separate notes of even date herewith being given for the interest aforesaid.]*

ROBERT E. MOORE,
CARLOTTA M. MOORE,
734 *5th N. W.*

Payable at ——.
No. —.

[Written across the face:] Cancelled; paid.

(Endorsed:) $48.00. Rec'd M'ch 1, '88, first semi-annual interest, forty-eight dollars. H. C. Porter. 9582. Robert E. Moore, Carlotta M. Moore. Int., $48. Due x | 3. M'ch, '89. Int., 48. Due x | 3. Sept. '89. Oct. 22, '89. Int. p'd to date. H. C. Porter. Without recourse.

89 EXHIBIT "E." O. N., Ex'r.

Secured by deed of trust, sub 49, square 111, D. C.

$1,250.00. WASHINGTON, D. C., *March* 8, 1886.

Two years after date I promise to pay to the order of William Brough one thousand two hundred and fifty $_{100}$ dollars at Second National bank, Washington, D. C., value received, with interest at 6% per annum, payable semi-annually until paid.

[H. C. PORTER.]*

No. 2. Due March 7, 1888.

[Written across the face:] Paid & cancelled.

(Endorsed:) 2893. 2d m. H. C. Porter. 1,250. 6%, semi-ann. 8–11. M'ch, '88. Pay to the National Union Ins. Co. of Washington. Wm. Brough. Without recourse. 1886, Sept. 4, int. p'd to 8 Sept., '86, $37.50. M'ch 5, '87, int. p'd to 8 M'ch, '87, 37.50. Sept. 6, int. p'd to 8 Sept., '87, 37.50. 1888, M'ch 9, int. p'd to 8 M'ch, '88, 37.50. Sept. 3, int. paid to 8 Sept., '88, $37.50. 1889, M'ch 7, int. p'd to 8 M'ch, '89, 37.50. Sept. 16, int. p'd to 8 Sept., '89, 37.50.

[* Words enclosed in brackets erased in copy.]

90 EXHIBIT F. O. N., Ex'r.

WASHINGTON, *Dec.* 5, 1889.

Mr. William E. Woodward.

DEAR SIR: Please oblige me by letting Mr. Myers have the amount he desires, which I think was $150 or $175.

Yours respectfully, CARLOTTA M. MOORE,
734 *5th St.*

91 EXHIBIT "G." O. N., Ex'r.

WASHINGTON, *April* 28, 1890.

Mr. Wm. R. Woodward.

DEAR SIR: Your statement of account received this morning. I am surprised that Mr. Rawlings should not have consulted me in regard to the insurance policy, namely, the amount for which I wished the house insured for and the length of time. I will attend to this matter as soon as possible. In the meantime hold the balance you have in hand, $93.01, until you hear from me.

Respectfully, CARLOTTA MACGREAL.

92 EXHIBIT "H." O. N., Ex'r.

Sarah Utermehle, by Wm. R. Woodward, attorney, in account with Carlotta M. McGreal, Dr.

Lot —, sub, square 111.

22 Oct., 1889. Amount of loan		$8,000 00
Disbursements:		
Paid note held by H. C. Porter	1,735 70	
" " at National Bank of Washington	1,259 17	
" 2d ½ of taxes 1888–'9	13 61	
" W. F. Mattingly, costs in No. 11828, equity	4 19	
" recording deed of trust and two releases	4 25	
" W. R. Woodward, title, conveyancing, and services	62 50	
" F. T. Rawlings, commissions	182 50	
" " balance commissions	30 00	
		3,291 99
		4,708 01

15 Nov., 1889.	Paid J. G. Myers, contractor, on architect's order...	$800	
29 " " "	J. G. Myers, contractor, on architect's order...	800	
7 Dec., " "	J. G. Myers, contractor, on architect's order...	800	
" " " "	J. G. Myers, architect, on C. M. Moore's order...	175	
21 " " "	J. W. Myers, contractor, on architect's order...	800	
29 Jan'y, 1890. "	J. W. Myers, contractor, on architect's order...	600	
25 Feb'y, " "	J. W. Myers, contractor, on architect's order...	600	
31 March, " "	F. T. Rawlings, insurance..... ...	40	
			4,615 00
			93 01

93 EXHIBIT "I." O. N., Ex'r.

UTERMEHLE
v.
MOORE.

No. —. WASHINGTON, D. C., 7 *December*, 1889.

Central National Bank of Washington City

Pay to the order of J. G. Myers one hundred and seventy-five $_{100}$ dollars.

$175. WM. R. WOODWARD.

[Written across the face:] Central Nat'l bank, Washington, D. C. Paid Dec. 7, 1889.

(Endorsed:) J. G. Meyers.

94 EXHIBIT "J." O. N., Ex'r.

Office of J. G. Meyers, architect, National Safe Deposit building, corner New York avenue and Fifteenth street northwest.

Received, Washington, D. C., Dec. 7, 1889, from Mr. W. R. Woodward one hundred and seventy-five dollars ($175) on account for drawings made and superintend- the construction of Mrs. Carlotte Moore's house, on 19th street N. W.

J. G. MEYERS.

EXHIBIT "K." O. N., Ex'r.

Office of J. G. Meyers, architect, National Safe Deposit building, corner New York avenue and Fifteenth street northwest.

WASHINGTON, D. C., *Nov.* 15, 1889.

Mr. W. R. Woodward.

DEAR SIR: There is now due to Jos. W. Meyers the first payment on his contract with Mrs. Carletta Moore for building her house, No. 1612 Nineteenth street N. W., which is eight hundred dollars. I recommend the same to be paid to him.

Yours respectfully, J. G. MEYERS.

95 (Endorsed.)

Received the within eight hundred dollars from Mr. W. R. Woodward in full for the first payment, as per contract, for building Mrs. Carlitta Moore's house, on nineteenth street N. W.

Nov. 15, '89.

JOS. W. MEYERS.

EXHIBIT "L." O. N., Ex'r.

Office of J. G. Meyers, architect, National Safe Deposit building, corner New York avenue and Fifteenth street northwest.

WASHINGTON, D. C., *Nov.* 29, 1889.

Mr. W. R. Woodward, # 472 La. Ave.

DEAR SIR: There is now due to Jos. W. Meyers the second payment, which is eight hundred dollars ($800), on his contract for building Mrs. Carlotta Moore's house, on Nineteenth street bet. Q & R streets N. W. I recommend the same to be made to him.

Yours respectfully, J. G. MEYERS.

(Endorsed.)

Received the within eight hundred dollars from Mr. W. R. Woodward in full for the second payment on my contract with Mrs. C. Moore.

Nov. 29, '89.

JOS. W. MEYERS.

96 EXHIBIT M. O. N., Ex'r.

Office of J. G. Meyers, architect, National Safe Deposit building, corner New York avenue and Fifteenth street northwest.

WASHINGTON, D. C., *Dec.* 7, 1889.

Mr. W. R. Woodward.

DEAR SIR: There is now due to Jos. W. Meyers the third payment, which is eight hundred dollars ($800), on his contract for

building Mrs. Carlotta Moore's house, on 19th street bet. Q & R streets N. W. I recommend the same to be paid to him.

Yours respectfully, J. G. MEYERS.

(Endorsed.)

Received the within eight hundred dollars ($800) from Mr. W. R. Woodward in full for the third payment, as per contract.

Dec. 7, '89.

JOS. W. MEYERS.

97 EXHIBIT "N." O. N., Ex'r.

Office of J. G. Meyers, architect, National Safe Deposit building, corner New York avenue and Fifteenth street northwest.

WASHINGTON, D. C., *Dec.* 21, 1889.

Mr. W. R. Woodward.

DEAR SIR: The fourth payment is now due to Jos. W. Meyers, which is eight hundred dollars ($800), on his contract with Mrs. Carletta Moore for building her house, on 19th street N. W. I recommend the same to be made to him.

Yours respectfully, J. G. MEYERS.

(Endorsed.)

Received the within eight hundred dollars ($800) from Mr. W. R. Woodward in full for the fourth payment, as per contract.

Dec. 21, '89.

JOS. W. MEYERS.

EXHIBIT "O." O. N., Ex'r.

Office of J. G. Meyers, architect, National Safe Deposit building, corner New York avenue and Fifteenth street northwest.

WASHINGTON, D. C., *Jan.* 29, 1890.

Mr. W. R. Woodward.

DEAR SIR: There is now due to Jos. W. Meyers the fifth payment, which is six hundred dollars ($600), on his contract with Mrs. Carlotto Moore for building her house, No. 1612 19th street N. W. I recommend the same to be paid.

Yours respectfully, J. G. MEYERS.

(Endorsed.)

Received the within six hundred dollars in full for the fifth payment, as per contract with Mrs. Moore.

Jan. 29, '90.

JOS. W. MEYERS.

98 EXHIBIT "P." O. N., Ex'r.

Office of J. G. Meyers, architect, National Safe Deposit building, corner New York avenue and Fifteenth street northwest.

WASHINGTON, D. C., *Feb.* 25, 1890.

Mr. R. W. Woodward.

DEAR SIR: There is now due to Jos. W. Meyers the sixth payment, which is six hundred dollars ($600), on his contract with Mrs. Carlotto Moore for building her house, on 19th street N. W. I recommend the same to be paid to him.

Yours respectfully, J. G. MEYERS.

(Endorsed.)

Received the within six hundred dollars from Mr. R. W. Woodward, which is in full for the sixth payment, as per contract.
Feb. 28, 1890.
March 1.

JOS. W. MEYERS.

99 EXHIBIT "Q." O. N., Ex'r.

UTERMEHLE
v.
MOORE.

No. —. WASHINGTON, D. C., 15 *November*, 1889.

Central National Bank of Washington City

Pay to the order of Joseph W. Myers eight hundred $\frac{00}{100}$ dollars.
$800. WM. R. WOODWARD.

[Written across the face:] Central Nat'l bank, Washington, D. C. Paid Nov. 15, 1889.

(Endorsed:) Joseph W. Meyers.

EXHIBIT "R." O. N., Ex'r.

UTERMEHLE
v.
MOORE.

No. —. WASHINGTON, D. C., 29 *November*, 1889.

Central National Bank of Washington City

Pay to the order of Joseph W. Meyers eight hundred $\frac{00}{100}$ dollars.
$800. WM. R. WOODWARD.

[Written across the face:] Central Nat'l bank, Washington, D. C. Paid Nov. 29, 1889.

(Endorsed:) Joseph W. Meyers.

100 EXHIBIT "S." O. N., Ex'r.

UTERMEHLE
v.
MOORE.

No. —. WASHINGTON, D. C., 7 *December*, 1889.

Central National Bank of Washington City

Pay to the order of Joseph W. Meyers eight hundred $_{100}$ dollars.
$800. WM. R. WOODWARD.

[Written across the face:] Central Nat'l bank, Washington, D. C. Paid Dec. 7, 1889.

(Endorsed:) Jos. W. Meyers.

EXHIBIT "T." O. N., Ex'r.

UTERMEHLE
v.
MOORE.

No. —. WASHINGTON, D. C., 21 *December*, 1889.

Central National Bank of Washington City

Pay to the order of Joseph W. Meyers eight hundred $_{100}$ dollars.
$800. WM. R. WOODWARD.

[Written across the face:] Central Nat'l bank, Washington, D. C. Paid Dec. 21, 1889.

(Endorsed:) Joseph W. Meyers.

101 EXHIBIT "U." O. N., Ex'r.

UTERMEHLE
v.
MOORE.

No. —. WASHINGTON, D. C., 29 *January*, 1890.

Central National Bank of Washington City

Pay to the order of Joseph W. Meyers six hundred $_{100}$ dollars.
$600. WM. R. WOODWARD.

[Written across the face:] Central Nat'l bank, Washington, D. C., Jan. 29, 1890.

(Endorsed:) Joseph W. Meyers.

EXHIBIT "V." O. N., Ex'r.

UTERMEHLE
v.
MOORE.

No. —. WASHINGTON, D. C., 1 *March*, 1890.

Central National Bank of Washington City

Pay to the order of Joseph W. Meyers six hundred $\frac{00}{100}$ dollars.
$600. WM. R. WOODWARD.

(Endorsed:) Joseph W. Meyers.

EXHIBIT "W." O. N., Ex'r.

UTERMEHLE
v.
MOORE.

No. —. WASHINGTON, D. C., 31 *March*, 1890.

Central National Bank of Washington City

Pay to the order of the Arlington Fire Insurance Co. forty *dollars* $\frac{00}{100}$ dollars.
$40. WM. R. WOODWARD.

(Endorsed:) C. B. Maury, treas. Riggs & Co., bankers, Apr. 1, 1890, Washington, D. C.

102 EXHIBIT X. O. N., Ex'r.

No. —. WASHINGTON, D. C., 30 *October*, 1889.

Central National Bank of Washington City

Pay to the order of Frank T. Rawlings one hundred and eighty-two $\frac{50}{100}$ dollars.
$182.50 WM. R. WOODWARD.

[Written across the face:] Central Nat'l bank, Washington, D. C. Paid Oct. 30, 1889.

(Endorsed:) Frank T. Rawlings. Riggs & Co., bankers, Oct 31, 1889, Washington, D. C.

EXHIBIT "Y." O. N., Ex'r.

No. —. WASHINGTON, D. C., 31 *October*, 1889.

Central National Bank of Washington City

Pay to the order of Frank T. Rawlings thirty $\frac{}{100}$ dollars.
$30. WM. R. WOODWARD.

[Written across the face:] Central National bank, Washington, D. C. Paid Nov. 1, 1889. E. T.

(Endorsed:) Frank T. Rawlings. Riggs & Co., bankers, Nov. 1, 1889, Washington, D. C.

EXHIBIT "Z." O. N., Ex'r.

No. 188. WASHINGTON, D. C., 29 *October*, 1889.

Central National Bank of Washington City

Pay to the order of Wm. F. Mattingly's costs four $\frac{10}{100}$ dollars.
$4.10. WM. R. WOODWARD.

(Endorsed:) Moore *v.* Porter *et al.* ≠ 11828. Equity. Bal. check costs. Pay to the order of R. J. Meigs, clerk. Wm. F. Mattingly. R. J. Meigs, clerk, by L. C. Williams, ass't clerk. Nat'l Bank of the Republic, Nov. 7, 1889, Washington, D. C.

103 EXHIBIT "Z 2." O. N., Ex'r.

Form No. 2.

First half of tax payable in November, 1888; two per cent. penalty on the first day of December, 1888, and a like penalty on first day of each succeeding month. Second half payable in May, 1889; two per cent. penalty on the first day of June, 1889, and a like penalty on the first day of each succeeding month.

Washington city.

Z 2, folio 334.

Robert E. and Carlotta M. Moore to the District of Columbia, Dr., for tax on real estate for the year ending June 30, 1889.

Tax, $1.50 per $100 assessed valuation.

Square.	Lot.	Value of lot.	Value of impr'ments.	Total assessed value.	
111....	S. 49	$1,650	.....	$1,650	All.

Collector's office, District of Columbia. Paid Oct. 30, 1889.

To 2nd half of tax	$12 37
To penalty of ten per cent	1 24
Advertising	
Total	$13 61

Received payment,

K. E. G. DAVIS,
Collector D. C.,
By DANIEL.

[On the margin:] Address collector of taxes D. C., District building, Washington, D. C.

104 EXHIBIT "*a a*." O. N., Ex'r.

Copy.

Wm. R. Woodward & Wm. Redin Woodward, attorneys-at-law.

[The Washington Title Insurance Company.] *

Secured by deed of trust on lot 49, sub, square 111.

$8,000.00. WASHINGTON, D. C., *October* 22*d*, 1889.

Three years after date I promise to pay to the order of Sarah Utermehle eight thousand $_{100}$ dollars, value received, with interest until paid, at the rate of six per cent. per annum, payable quarterly.

Payable at ——. Due —— —, 18—. No. —.

CARLOTTA M. MOORE,
734 *5th N. W.*

(Endorsed:) Feb. 5th, 1890. 3 mos. interest to January 22, '90, $120.00.

105 EXHIBIT "*b b*." O. N., Ex'r.

734 5TH ST. N. W., WASHINGTON, *April* 21, '90.

SIR: I have been advised that the insurance known as "builders' risk" has been raised on my premises, No. 1612 19th St. N. W.

I would suggest such action in the premises regarding insurance as is warranted by your position as representative of Mrs. Taylor.

Very respectfully, CARLOTTA MACGREAL
(Late MOORE).

Wm. Woodward, Esq., Gunton b'ld'g, city.

[* Words enclosed in brackets erased in copy.]

106 *C. C. Original $8,000 Note.*

EXHIBIT "*d d.*" O. N., Ex'r.

Law Reporter blank No. 2.

Deed of Trust.

This indenture, made this twenty-second day of October, in the year of our Lord one thousand eight hundred and eighty-nine by and between Carlotta M. Moore, of the District of Columbia, party of the first part, and William R. Woodward and Leroy M. Taylor of the same place parties of the second part.

Whereas, the said Carlotta M. Moore is justly indebted unto Sarah Utermehle in the full sum of eight thousand ($8,000) dollars, for which she hath passed to her, her promissory note of even date with these presents and payable to the order of said Sarah Utermehle in three years after date with interest thereon at six per cent. per annum, payable quarterly.

And whereas, the party of the first part, desires to secure the prompt payment of said debt, and the interest thereon, when, and as the same shall become due and payable, together with all costs and expenses that may accrue thereon;

Now, therefore, this indenture witnesseth, that the party of the first part, in consideration of the premises, and of one dollar lawful money to her in hand paid by the parties of the second part, the receipt of which before the sealing and delivery of these presents is hereby acknowledged, hath given, granted, bargained and sold, aliened, enfeoffed, released and conveyed, and doth by these presents give, grant, bargain and sell, alien, enfeoff, release and con-
107 vey unto the parties of the second part their heirs and assigns, the following-described land and premises, situate in the city of Washington, in the District of Columbia, and designated as lot numbered forty-nine (49) in the subdivision of square numbered one hundred and eleven (111) which is recorded in Liber J. H. K. folio 373 of the surveyor's office of the said District of Columbia, together with all and singular, the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity or otherwise however, of the party of the first part, of, in, to or out of the said land and premises.

To have and to hold the said land, premises and appurtenances, unto, and to the only use of the parties of the second part their heirs and assigns.

In and upon the trusts nevertheless, hereinafter declared, that is:—In trust to permit said Carlotta M. Moore, her heirs or assigns, to use and occupy the said described land and premises, and the rents, issues and profits thereof, to take, have and apply to, and for her and their sole use and benefit, until default be made in the payment of the debt hereby secured or any installment of principal or interest thereon, when and as the same shall become due and

payable, or any proper cost, charge, commission, or expense, in and about the same.

And upon the full payment of all of said debt, and the interest thereon, and all other proper costs, charges, commissions and
108 expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said Carlotta M. Moore, her heirs or assigns, at her or their cost.

And upon this further trust, upon any default or failure being made in the payment of the said debt or of any installment of principal or interest thereon, when and as the same shall become due and payable, or any proper cost, charge, commission, or expense in and about the same, then and at any time thereafter, to sell the said described land and premises at public auction, upon such terms and conditions, at such time and place, and after such previous public advertisement, as the parties of the second part or the survivor of them, his heirs, or the trustee acting in the execution of this trust, shall deem advantageous and proper; and to convey the same in fee-simple to, and at the cost of, the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase-money; and of the proceeds of said sale or sales, firstly to pay all proper costs, charges and expenses, including all taxes, general and special, due upon said land and premises at time of sale, and to retain as compensation a commission of five per centum on the amount of the said sale or sales; secondly, to pay whatever may then remain unpaid of the said debt and the interest thereon, whether the same shall be due or not; and lastly, to pay the remainder of said proceeds, if any there be, to said Carlotta M. Moore her heirs, executors, administrators or assigns.

109 And the said Carlotta M. Moore doth hereby agree at her own cost, during all the time, wherein any part of the matter hereby secured shall be unpaid or unsettled, to keep the said improvements insured against loss by fire, in the name and to the satisfaction of the parties of the second part, who shall apply whatever may be received therefrom to the payment of the matter hereby secured, whether due or not; and also to pay all taxes and assessments, both general and special, that may become due on, or be assessed against, said land and premises during the continuance of this trust, and that upon any default or neglect to so insure, or pay taxes and assessments, any party secured hereby may have said improvements insured and pay said taxes and assessments, and the expense thereof shall be a charge hereby secured and bear interest at the rate of ten per centum per annum until paid.

In testimony whereof, the party of the first part hath hereunto set her hand and seal on the day and year first hereinbefore written.

CARLOTTA M. MOORE. [SEAL.]

Signed, sealed and delivered in the presence of—
FRANK T. RAWLINGS.

110 DISTRICT OF COLUMBIA, *To wit:*

I, Frank T. Rawlings, a notary public in and for the said District, do hereby certify that Carlotta M. Moore, a widow, party to a certain deed bearing date on the twenty-second day of October, A. D. 1889, and hereto annexed, personally appeared before me in said District, the said Carlotta M. Moore being personally well known to me to be the person who executed the said deed, and acknowledged the same to be her act and deed [and the said ——, being by me examined privily and apart from — husband and having the deed aforesaid fully explained to —, acknowledged the same to be — act and deed, and declared that — willingly signed, sealed, and delivered the same, and that — wished not to retract it].*

Given under my hand and official seal this twenty-second day of October, A. D. 1889.

FRANK T. RAWLINGS,
[SEAL.] *Notary Public.*

(Endorsed:) 68. Deed of trust. Carlotta M. Moore to William R. Woodward and Leroy M. Taylor. Received for record on the 22d day of Oct., A. D. 1889, at 2.58 o'clock p. m., and recorded in Liber No. 1436, at folio 129 *et seq.*, one of the land records for the District of Columbia, and examined by Jas. M. Trotter, recorder. Office of recorder of deeds, District of Columbia.

111 EXHIBIT "*e e.*" O. N., Ex'r.

734 5TH ST. N. W., WASHINGTON, *Ap'l* 24, '90.

MADAM: You are advised that your legal representative, Mr. Woodward, has in his possession an amount sufficient to liquidate the interest due on my promis-ory note held by you for the quarter ending April 22nd last past.

You will please advise with Mr. Woodward with a view to securing said funds for the purpose named.

Very respectfully, CARLOTTA MACGREAL,
Late MOORE.

Mrs. Rose M. Taylor, addressed.

112 EXHIBIT "*f f.*" O. N., Ex'r.

The Washington Title Insurance Company; office, No. 472 Louisiana avenue, room 7.

Directors—William R. Woodward, president; William Redin Woodward, vice-president; Thomas W. Smith, Matthew G. Emery, Horace J. Gray, Thomas Dowling, George T. Dunlop, Gilbert B. Towles, Fred. W. Pratt.

William Burris, secretary and treasurer.

WASHINGTON, D. C., *April* 26, 1890.

MRS. CARLOTTA MACGREAL: Mrs. Taylor called with your note,

[* Words enclosed in brackets erased in copy.]

stating that I had money in hand to pay your interest for quarter ending 22 April ($120).

I have to state that your account is as follows:

Amount of loan		$8,000 00
Amount paid for trusts, releases, taxes, and expenses		3,291 99
Balance		$4,708 01
4 orders of architect, $800 each	$3,200	
2 " " " 600 each	1,200	
Architect, by your order	175	
		4,575 00
		$133 01
Policy of insurance for 5 years		40 00
Balance on hand		$93 01

One hour after Mrs. Taylor called I was notified by the architect that the amount held by me must be paid on the building or the mechanics' lien would be increased.

113 I would be glad if you would settle this matter, as I do not wish to hold this balance any longer than necessary.

Very respectfully, W. R. WOODWARD.

114 In the Supreme Court of the District of Columbia.

SARAH UTERMEHLE
vs.
CARLOTTA M. MACGREAL *et al.* } No. 12568. Equity.

I, Oscar Nauck, an examiner in chancery in and for the city of Washington, District of Columbia, do hereby certify that the foregoing depositions were taken down by me from the oral statements of the said witnesses at the time and place mentioned in the caption thereof; that the said witnesses were by me first duly sworn and cautioned to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause; that the said depositions were thereupon read over by the said witnesses and by them subscribed in my presence and in the presence of the respective counsel.

I further certify that I am not of counsel or in anywise interested in the result of this suit.

OSCAR NAUCK, *Examiner.*

115 Filed Feb. 24, 1892. J. R. Young, clerk.

UTERMEHLE
vs.
MACGREAL } Equity. No. 12568.

Depositions for and on behalf of defendant MacGreal by me taken, signed, and, this 24th day of February, A. D. 1892, by me

delivered to the clerk of the supreme court of the District of Columbia.

MASON N. RICHARDSON, *Examiner.*

116 In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

Filed Feb. 24, 1892. J. R. Young, clerk.

UTERMEHLE *vs.* MACGREAL } Equity. No. 12568.

DISTRICT OF COLUMBIA, *To wit:*

Be it remembered that at an examination of witnesses begun and held on the 18th day of March, 1891, and continued from time to time until the 8th day of October, 1891, when the within depositions were taken, I, Mason N. Richardson, an examiner in chancery, did cause to be personally present Carlotta MacGreal, Mary E. Moore, Francis C. Burke, John P. Stout, and Charles A. Elliot to testify for and on behalf of the respondent MacGreal, with due and sufficient notice to counsel for complainants.

MASON N. RICHARDSON,
Examiner in Chancery.

117 WASHINGTON, D. C.,
March 18th, 1891—1.30 o'clock p. m.

Met, pursuant to agreement of counsel, at the residence of Charles A. Elliot, Esq., to take testimony for and on behalf of the respondents in the above-entitled cause.

Present: Mr. C. A. Elliot, for the respondents; Mr. Edwards and Mr. Woodward, for complainants; Mr. Richardson, examiner, and the witnesses for and on behalf of the respondents Carlotta MacGreal and Mary E. Moore; whereupon—

CARLOTTA MCGREAL, a witness of lawful age, being by me first duly sworn in the above cause for and on behalf of herself, testified as follows:

By Mr. ELLIOTT:

Q. You are one of the defendants in this cause?
A. I am.
Q. You may state, if you please, when you were born.
A. June 20th, 1869.
Q. Where were you born?
A. In Washington.
Q. When were you married?
118 A. The first time I was married in 1886.
Q. What year?
A. 1886.

Q. To whom?
A. Robert E. Moore.
Q. He is dead, I believe.
A. He is dead.
Q. When did he die?
A. April 20th, 1888.
Q. When were you married to your codefendant, William P. McGreal?
A. February 17th, 1890.
Q. Do you know the complainant, Mrs. Utermehle?
A. I do not know her.
Q. Do you know Mrs. Taylor, her daughter?
A. I do not.
Q. Do you know Frank T. Rawlings?
A. I have but a very slight acquaintance with him?
Q. Are you acquainted with Mr. William R. Woodward?
A. I am not; very slightly, I might say.
Q. When and under what circumstances did you become acquainted with Mr. Rawlings?
A. The first time I met him, do you mean?
Q. Yes.
A. I met him down the river one evening for a few minutes, and then I called on him about this business. That was the second time, I think, I ever saw him.

119 Q. When you called upon him about this business—what do you refer to?
A. I called to secure a loan.
Q. Were you alone or with anybody?
A. My mother was with me.
Q. Where did you see Mr. Rawlings?
A. I saw him in the office of the Arlington Fire Insurance Company.
Q. Will you state exactly what happened on that occasion?
A. I asked for a loan of $8,000.00. He said he thought he could get it—I mean that he would let me know.
Q. What then happened?
A. I do not remember of anything, excepting that he wished to know what I was going to do with the loan. I spoke of the lot——
Q. Where was the lot?
A. 19th street between Q and R.
Q. How long were you at his office?
A. About a few minutes.
Q. About how long?
A. About as long as it would take to say it; about 10 or 15 minutes.
Q. On that occasion was there anything said by Mr. Rawlings to you as to how this $8,000.00 should be disbursed and by whom?
A. It was not mentioned. The parties that were loaning the money were not mentioned.

Q. How often did you see him subsequently?
120 A. Mr. Rawlings called in a few days after that and left

word at the house, as I was away at the time, that he had secured the loan.

Q. You did not see him on that occasion?

A. No, sir; I did not see him.

Q. After that occasion when did you see him?

A. At the same time he left word that he had left the papers and Mr. Woodward was preparing them, and that he was going to New York, but it would be all right.

Q. What did you then do?

A. I waited for a few days, supposing that I would hear perhaps from him or from Mr. Woodward, and as I did not, and they were pressing me for the payment of one of the notes, I called on Mr. Woodward. Mr. Woodward said that the papers were all right, and that the money was there, and that he was simply waiting for Mr. Rawlings' return.

Q. After the call of Mr. Rawlings at your house, when did you next see him—Mr. Rawlings?

A. Mr. Rawlings called after he returned from New York with the deed of trust and the papers.

Q. What conversation then ensued between you and him?

A. I signed the paper that he said was the deed of trust. He did not read it to me. He said, There is not any necessity for it; they are all alike.

Q. What other papers did you sign outside of the deed of trust?

A. I signed a note that carried the deed of trust, went with the deed of trust.

121 Q. After that time when did you next see Mr. Rawlings?

A. Mr. Rawlings called with a note from Mr. Mattingly, my attorney, stating that there was a bill of $26.00 for advertising and some other papers that he wished to straighten up, and said that he would attend to paying the two notes off immediately, and all would be straightened up.

Q. By the two notes what do you mean?

A. Two certain promissory notes on the property.

Q. By whom were those notes given?

A. The first note was an assumed note. Mr. Moore assumed the note before he died. I did not assume it with him. The other note was a joint note.

Q. Of whom?

A. Of Robert E. Moore and Carlotta M. Moore.

Q. Did any conversation ensue between you and Mr. Rawlings on that occasion beyond what you had stated?

A. Well, he was talking about the paying up of the notes and the taxes, and he said he would pay that bill of $26.00 for advertising in the "Star," and then attend to the business right away of paying off all these notes.

Q. It has been testified to by Mr. Rawlings that he negotiated the loan with the understanding that the proceeds of the loan were to be placed in the hands of Mr. William R. Woodward and by him disbursed. What do you know about that?

A. I never have heard of anything except since that I did not

get the money at all, and it seems like that must have been the understanding between the parties. It was not with me.

122 Q. Where did you first learn of such an arrangement?

A. Well, Mr. Woodward had the papers and the money, and I supposed that the money was mine, to go and get it when I wanted it; but as I did not get it and they said there would not be any money advanced until the building progressed, I was not notified when the first payments were made or the last payments were made. When I saw Mr. Woodward after that the last time, and the only time, all the money had been paid out.

Q. How many times did you see Mr. Woodward?

A. I saw him twice.

Q. When did you first see Mr. Woodward?

A. I saw Mr. Woodward while Mr. Rawlings was in New York.

Q. Was there anything said on that occasion in regard to the handling of the money?

A. There was not.

Q. When did you next see Mr. Woodward?

A. I saw Mr. Woodward in March, after all the payments had been made.

Q. 1890?

A. Yes, sir; March, 1890.

Q. What happened on that occasion?

A. I went to him and he told me that they had made the last payment, and then he did not seem like he was able to tell me very much, and I could not learn very much from him, and then I asked him for a statement. I did not get the statement then or I did not get it that month, and I did not get it until the last of the next month, April.

123 Q. I find a letter introduced in evidence by the complainants marked Exhibit G, dated April 28th, 1890, purporting to be signed by you, wherein you speak of the balance in Mr. Woodward's hands of $93.01. How long before the date of that letter had you received the statement from Mr. Woodward, if you remember?

A. About a day or so.

—. What was the date of that, may I ask?

A. April 28th, 1890. It was about a couple of days before that.

Q. From the time that you were notified of the acceptance of the loan and up to the date of that letter or the date of Mr. Woodward's statement what arrangement did you make or authorize to be made with regard to the disbursement of that money?

A. I made none.

Q. What did you know about it?

A. I only knew that I did not get the money, and I was not prepared to act at all at that time; it was not in my power to. When I did learn of it it was too late, after the money had been spent and wasted, for me to complain except in the manner that I did do it.

Q. Did or did not Mr. Rawlings communicate to you previous to

the consum-ation of the transaction that the money was to be disbursed by the attorney of Mrs. Utermehle?

A. He did not. I did not know that Mrs. Utermehle had any attorney and I did not know Mrs. Utermehle until the interest fell due. I did not know the parties loaning the money at all.

Q. Did he or not communicate to you the fact that the money was to be disbursed by Mr. William R. Woodward?

A. He did not.

124 Q. Or anybody?

A. No one.

Q. What have you to say in regard to the insurance upon this property?

A. The fire insurance?

Q. Yes.

A. Mr. Rawlings said, I suppose you have not any objection to my having it in the Arlington Fire Insurance. I said, None at all, and I supposed it would be taken out for three years, to be for three years, but it was taken out for five, and I was not asked or consulted about it at all. In fact, I was ignored through the whole matter.

Q. On page 32 it seems that Mr. Rawlings has stated, in answer to a question directing his attention to the fact of the policy for five years instead of three, "that was explained to her mother and to Mrs. Moore satisfactorily, I hope. I explained to her the advantage; she would save a whole year's premium in taking it out for a five years' policy and a half year in taking out a three years' policy."

A. I believe he tried to explain it to my mother one day while I was out, but it was not at all satisfactory to me, and I should rather have been asked which I preferred to save and what length of time I wanted it. It was not with him to decide that.

Q. Were you present when the explanation was made to your mother?

A. I was not; I was not in the house.

Q. Was or was not any explanation made to you?

A. None whatever.

125 Q. What knowledge did you have on that subject?

A. None whatever.

Q. What knowledge did you have on that subject?

A. In what way do you mean?

Q. I mean whether you knew that the property was to be insured for 5 years.

A. I did not know that it was to be insured for 5 years, but only to hold over for the time—the length of time that the money was loaned, which was three years.

Q. Page 33, I observe in Mr. Rawlings' testimony, he has testified substantially that—this question appears: "Q. State whether or not you had authority from Mrs. Moore, now Mrs. McGreal, as to informing Mr. Woodward concerning the disbursements of this money for the construction of the house and the method in which it was to be disbursed. A. That was explained by me to her, with the

suggestion that she see him in person and make a better explanation there." What have you to say to that?

A. Mr. Rawlings never mentioned it, and I did not see Mr. Woodward.

Q. On page 35 of Mr. Rawlings' deposition I find it stated, "When Mrs. Moore made arrangements to get this loan of $8,000.00 the cost of the building was to be of that amount, and I asked her what provision she made for raising sufficient funds to pay off the note. She said she owned other property and would realize
126 on that to pay off the difference." What have you to say to that?

A. I had no idea of putting $8,000.00 in the property. If I had had it I should not have done it; and as for owning other property, I had none at that time at all.

Q. Did you state to him that you did own other property?

A. I said that I supposed that I would have some in time; that I wished the loan to be taken up that was about due or overdue.

Q. What expectation had you at that time?

A. Only the promise of my brothers-in-law to quitclaim the property to me that I had a slight interest in.

Q. When did you first became acquainted with Dr. Taylor?

A. I heard Mr. Rawlings speak of having a large amount of money to invest for Dr. Taylor, and, supposing that this loan that he had negotiated for me was perhaps Dr. Taylor's money, I went to Dr. Taylor to see if he could not take up this loan on this piece of property that I owned at that time, and Dr. Taylor referred me to his agent, Mr. Rawlings. I objected to going to Mr. Rawlings. I said I had paid him too large a commission already. He said, You paid him two per cent. commission; and I said, No, I paid him three per cent., and I did not wish to pay that much again, and he said that he would examine the property and look into it and let me know, and I left then, supposing that he would let me know, drop me a postal or something, but he did not, and in a few days Mr. Rawlings called and said that he was ready to make the loan on that property, without my seeing Mr. Rawlings at all, being sent by Dr. Taylor to our house.

127 Ex. M. N. R. No. "A."

1505 Pennsylvania Ave. N. W.,
Washington, *Oct.* 31*st*, 1889.

Statement of Frank T. Rawlings in Relation to Loan of $8,000 *Made for Mrs. C. M. Moore for* 3 *Yrs. at* 6% *from Oct.* 22, '89.

Paid H. C. Porter, note & int.		1,735 70
" Nat'l Union Ins. Co., note & int.		1,259 17
" 2d half of taxes, 1889		13 69
" Mr. Mattingly, dismissing suit		4 18
" recording trust & 2 releases		4 25

Paid Wm. R. Woodward, legal services	15	
" notary public	5	
" commission	240	
		$3,276 99
Am't in hands of Wm. R. Woodward		4,708 01
		7,985 00
F. T. Rawlings' ch'k to balance		15 00
		8,000 00

Ex. "A," Mason N. Richardson, examiner.

128 Q. Between the time that you saw Dr. Taylor at his house and this conversation ensued and the time Mr. Rawlings called had you or not see- Mr. Rawlings?

A. I had not seen Mr. Rawlings.

Q. Had you communicated with him in any way?

A. I had not.

Q. As I understand, Dr. Taylor on page 55 states that when you saw him at his house he referred you to Mr. Rawlings as *your* agent.

A. He referred me to his agent, Mr. Rawlings, as was proved by Mr. Rawlings calling at my house without being sent for.

Q. Are you quite positive that he referred to Mr. Rawlings as his agent?

A. He did. He had this sum of money that he spoke of, that he had to invest for Dr. Taylor, before that.

Q. I show you a paper purporting to be a statement dated October 31st, 1889, a statement from Mr. Rawlings, and I ask you in whose handwriting and figures, if you know, that paper is.

A. That is Mr. Rawlings' writing and statement.

Q. From whom did you receive it?

A. From Mr. Rawlings.

Mr. ELLIOTT: I offer that in evidence, and the examiner will please mark it as Respondent's Exhibit M. N. R. No. "A."

Q. I notice discrepancies in this statement and the statement filed with complainant's testimony and marked Exhibit "H," to wit, the charge of $62.50, appearing in Exhibit H, paid to Mr. Wood-
129 ward, "title, conveyancing, and services," and on this paper that I hold in my hand, M. N. R. No. "A," Wm. R. Woodward, legal service, $15.00. Do you know anything about that?

A. I think that $15.00 was for attending to the papers and straightening the papers and the deeds. I do not understand what the $62.50 was for. There was not any explanation for that account.

Q Was there or not an arrangement made between you and Mr. Woodward as to what his fee should be?

A. There was not. There was not any fee charged that I heard of.

Q. Did you authorize Mr. Woodward to make any arrangement in regard to his fees?

A. I did not.

Q. I observe also that in Exhibit H there appears two charges, aggregating $212.50, for commissions to Mr. Rawlings, where, as it appears on Exhibit Number One, a commission of $240 to Mr. Rawlings. Can you explain that?

A. Mr. Rawlings charged me 3 per cent. on the $8,000, which was $240.00, which was one per cent. more than is legally charged anywhere in the city for loans.

Q. I asked you if you would explain the difference between those figures in the statement, Exhibit H. It appears $212.50 and Exhibit No. One $240.00.

A. I do not understand the other statement. I understand the statement that Mr. Rawlings gave me.

Hereupon, to accommodate counsel, the examination of the witness was discontinued, and—

130 MARY E. MOORE, a witness of lawful age, being by me first duly sworn according to law for and on behalf of the respondents, testified as follows:

By Mr. ELLIOT:

Q. What relation, if any, are you to the defendant Carlotta M. McGreal?

A. She is my sister's child.

Q. How many children did your sister have?

A. Two besides Carlotta.

Q. Were those the only children that she had?

A. They are.

Q. What were the sexes of those children?

A. Both boys.

Q. Are they living or dead?

A. Both dead.

Q. How long have you known Mrs. McGreal?

A. Ever since she was born.

Q. Were you present?

A. I was at the time that she was born.

Q. When was she born?

A. She was born on the 20th of June, 1869.

Q. Where was she born?

A. At 734 5th street, 3rd floor front.

Q. What doctor was in attendance?

A. Dr. William G. Palmer.

Q. Is he living or dead?

131 A. He was living the last I heard.

Q. Do you remember what nurse attended Mrs. Burk?

A. She had no nurse.

Q. Who was present at the birth besides yourself?

A. My mother.

Q. Are you quite positive as to the date?
A. I certainly am.

Cross-examination.

By Mr. EDWARDS:

Q. How long have you lived in Washington?
A. Ever since I was born.
Q. Where were you living at the time Mrs. McGreal was born?
A. I was living at the house, which was my parents' residence.
Q. Were you informed by either of the parties, Mr. or Mrs. McGreal, that you were required to be here as a witness?
A. Not until yesterday; they requested me.
Q. For what purpose?
A. Just to tell my *neice's* age; that was all, and that is really all I know about the case.
Q. Since Mrs. McGreal's birth has she and her mother continuously resided in this District?
A. Yes, sir; indeed I do not think that — ever have been out of each other's sight hardly any of that time.
Q. Were you informed why it was necessary to prove the date of her birth?
132 A. No, sir; I really cannot tell you. I know very little of this case. I have been away from home a good deal myself and I know very little of the case.
Q. When were you first spoken to by any of the parties to this suit, Mr. or Mrs. McGreal, concerning Mrs. McGreal's age?
A. I think a few months ago they spoke to me about it. They asked me if I remember- it only two months ago.
Q. Did they state to you the object of ascertaining the exact date?
A. Only that they might need it in a case that they expected to come up.
Q. Did they say what the case related to?
A. In regard to a piece of property that they had built on 19th street.
Q. Did it relate to the question of being relieved of any incumbrance of the property?
A. I do not understand the case and did not, and it was not explained to me.
Q. And are you positive, Mrs. Moore, that the question of Mrs. McGreal's age was not a subject of conversation between you and her mother or between her and her present husband, Mr. McGreal, more than those two months ago?
A. I think about that length of time.
Q. Did you ever hear the question of her age discussed more than two months ago?
A. I think not. I cannot be positive about that, but I think not.
Q. Did you ever hear or know anything about Mrs
133 McGreal, then being Mrs. Moore, having a difficulty concerning her property on 19th street, which involved the question of her age, before this suit?

A. No, sir; oh, no, sir.
Q. Never heard anything about that?
A. No, sir.
Q. Never knew that she had brought any suit in which her age was involved?
A. Until this case was brought, do you mean? No, sir.
Q. I understand that Mrs. Burke is your sister?
A. Yes, sir.
Q. How long did Mrs. Burke live with you in this house?
A. Well, until I was married.
Q. When was that?
A. On the 17th of February, 1874.
Q. You were living in this house at that time?
A. Yes, sir.
Q. Did you own the property?
A. Oh, no, sir; it was my father's property.
Q. After Mrs. Burke left this house, which I understand was at the time of her marriage, did—where did she go?
Q. She has never left the home.
Q. You left?
A. Oh, yes, sir; I left.
Q. You left here there?
A. Yes, sir.
134 Q. How long after you left did she remain?
A. Until last summer.
Q. And where did she go last summer?
A. To 19th street.
Q. Can you give the number?
A. 1612.
Q. Is that where Mr. and Mrs. McGreal now live?
A. It is.
Q. Did they also move into the house at the same time?
A. Yes, sir.
Q. That you understand to be the property involved in this litigation, do you not?
A. Yes, sir.
Q. And also the property wherein it is asserted that the question of Mrs. McGreal's age is important?
A. Yes, sir.
Q. They occupy it as a home?
A. Yes, sir.
Q. What do you know about that property?
A. I have told you that I know nothing about it.

Mr. ELLIOT: I have refrained from objecting all along to allowing the largest latitude, but I object to going into this. Her testimony-in-chief was confined exclusively to her age.
Mr. EDWARDS: The question is withdrawn.

Q. At the time of Mrs. McGreal's birth did you make any memorandum or anything or see any memorandum or entry made?

135 A. I could not tell you, really, and I could not tell that any was made. I have no recollection. I did not make any.

Q. What circumstance or fact is there that has brought to your attention or have you within your memory that enables you to state the precise day of this lad*ie*'s birth?

A. Well, I might mention a good many, but Lotta was born just one year before I graduated at the convent, and I graduated in 1870. She was just a year old when I graduated.

Q. What convent did you graduate from?

A. The Visitation academy, now on Connecticut avenue. It was then on G street.

Q. What time of the year did you close your tuition with that college?

A. It was the first of July, 1870.

Q. And you know that she was born before you closed?

A. I am positive that she was born on Sunday, the 20th of June, 1869.

MARY E. MOORE.
MARY E. MOORE.

Signed for the witness by me for consent of counsel.
Subscribed and sworn to before me this — day of ——, 1891.
MASON N. RICHARDSON,
Examiner in Chancery.

Whereupon the direct examination of CARLOTTA M. MCGREAL was resumed.

By Mr. ELLIOT:

136 Q. How long before you executed the papers that you have referred to before Mr. Rawlings had you seen Mr. Rawlings first?

A. I do not understand what you mean.

Q. How long before you executed the papers before Mr. Rawlings, as a notary public, had you seen Mr. Rawlings in regard to this?

A. You mean in regard to this business?

Q. Yes.

A. About a week or ten days.

Q. Within that period of time you saw him how often?

A. The time that he called at the house, I did not see him that time.

Q. I am speaking of the time that you saw him.

A. I may have seen him three times, counting the time at his office.

Q. At the time that this transaction was finally closed at the office of Mr. Woodward who was present, if you know?

A. I do not understand what you mean.

Q. At the time the transaction was actually closed, the papers delivered to Mr. Woodward, who was present; do you know?

A. I do not know anything about it. I was not present. Mr.

Rawlings, I believe, was the notary public to acknowledge and witness the papers in our house. I was not down to Mr. Woodward's office.

Q. Of course, then, you do not know what occurred at Mr. Woodward's office?

A. I do not.

Q. Did or did not anybody communicate to you what did
137 occur at Mr. Woodward's office?

A. They did not.

Q. In this transaction who was your counsel?

A. I had none.

Q. Who advised you in regard to it?

A. No one.

Q. The interest upon this note matured—I mean the last installment—what demand was made upon you for its payment then?

A. Notice sent that the interest was due.

Q. What did you then do?

A. I sent word to Mrs. Taylor to collect the money from Mr. Woodward.

Q. What next happened?

A. Mr. Woodward then sent the statement that he claims was $93.01, I believe, at that time.

Q. Since the sending of that statement what demand was made upon you for the payment of the interest?

A. I do not know that any has been made. Mr. Woodward at the time was talking of Mr. Taylor's matters. He said that they generally sold out the first time that they failed to pay the interest. Unless they were able to pay the interest there was very apt to be a sale, and he gave me to understand that that was the way that they did business.

Q. Are you quite positive that the deed of trust was not read over to you?

A. I am. I would *not* have known the parties that loaned
138 the money if it had been read to me. He said that there was not any necessity for reading it; that they are all alike. I do not know why he should have thought that I was acquainted with a deed of trust. I do not know that I ever heard one read that I remember of.

Q. Who was the builder of this house on 19th street?

A. Mr. Myers.

Q. What is his first name?

A. John Myers.

Q. Had you an architect and superintendent?

A. He was the architect.

Q. Who was the builder?

A. His brother, Joseph Myers.

Q. Since filing of the bill in this case I would ask you whether or not there have been any mechanic liens filed against the property.

Mr. EDWARDS: Objected to. Immaterial.

A. There has been quite a number filed against me. I was also threatened with them long before they were filed.

Q. Do you remember by whom, or the amounts?

Mr. EDWARDS: Objected to as immaterial.

A. They were threatened by the builder, Joseph Myers. He brought other men that were with other firms and he ordered them to file liens against me in my presence.

Q. Do you remember how much the aggregate was?

A. Over $3,500.00; between $3,000 and $4,000.00.

Q. How did it happen that you applied to Mr. Rawlings for any loan of money?

139 A. I saw his advertisement in the paper, offering certain amounts of money for loans.

Q. What paper do you mean?

A. "The Evening Star."

Q. Up to that time what had been your acquaintance with Mr. Rawlings?

A. I might say that I had none.

Q. You had met him, I believe?

A. I met him one time for a few minutes.

Q. Do you remember any equity suit in connection with this property excepting the present litigation?

A. There was a suit; they had ordered the sale of this piece of property.

Q. I simply ask you if there was a suit.

A. There was a suit.

Q. Go ahead and state it.

A. They had ordered the sale of the property, and I do not know how it was settled or straightened up, as it was in the hands of my attorney at the time.

Q. Was there not a bill in equity filed?

A. There was a bill in equity filed, I think.

Q. By whom, if you remember?

A. The attorney?

Q. Yes.

A. By Mr. Mattingly.

Q. About what time was that?

A. In the spring some time.

140 Q. Spring of what year?

A. 1888—1888 or 1889.

Cross-examination.

By Mr. EDWARDS:

Q. You say you were married to your first husband, Mr. Robert E. Moore, in 1886?

A. I was.

Q. Please give the month and year.

A. September 14th, 1886.

Q. At that time had you any separate property of your own?

A. I had not.
Q. Not a dollar in the world?
A. None.
Q. Had your husband, Mr. Robert E. Moore, any property at that time?
A. He had one house on 5th street.
Q. Please give the number of that house.
A. 819 5th street.
Q. Was that house encumbered at the time of your marriage?
A. It was.
Q. For how much?
A. $1,500.00.
Q. How long after his marriage did he acquire the property in controversy?
A. About very near a year, I think it was.
141 Q. How much money did he pay down for it?
A. He paid $1,400.00 and something.
Q. What was he to pay for the lot?
A. $4,250.00.
Q. It was vacant?
A. It was vacant.
Q. No improvements on it whatever?
A. None.
Q. How was he to pay for the balance?
A. Well, I suppose he was going to pay for it as he paid before. He had his income and he had property then at that time in Texas. He had money that he could have paid for it with and he would have paid for it as it had been convenient.
Q. I am speaking of the method of payment, Mrs. McGreal, provided for at the time of the purchase—the method of payment.
A. I understand it was in two notes—promissory notes.
Q. Were they secured in that way?
A. Secured by deed of trust on the lot.
Q. Explain what you mean by a deed of trust.
A. I cannot explain, only that a deed of trust holds a piece of ground or a piece of property.
Q. As liable for the amount due?
A. Amount due on it.
Q. And provides for sale in case of default?
A. I cannot tell what it provides. I do not know. I do not understand them. I have never read one, I do not think.
Q. Do you mean to say that you do not understand—you did not understand and do not understand—the object of a deed of trust that is executed to secure money for the deferred pay-
142 ments on property?
A. I understand that it holds a piece of property, but I do not know what it contains.
Q. Do you not know that in case of default the property would be sold by the trustees?
A. I suppose there is some such order in it. I do not know.
Q. You understood that that would be the case, did you not?

A. Well, I never understood such things. I cannot say that I was thinking about it at all at that time.

Q. You say your husband gave two notes representing the deferred purchase-money when he bought this vacant lot. Do you remember the amount of those notes?

A. One was for $1,600 and the other was for $1,250.

Q. Are you not mistaken, Mrs. Moore, in regard to your husband giving two notes? Was there not at the time of the purchase an incumbrance on this lot of some $1,200.00, which, under the provisions of the contract, he agreed to assume, and then gave his note for the balance?

A. I do not understand what was on the lot. I think he assumed a note, but I did not understand it.

Q. That is your remembrance of the transaction?

A. That is what I remember.

Q. And that note was the note of the gentleman from whom he purchased it—a Mr. H. C. Porter, was it not?

A. I think it was, to the best of my knowledge.

Q. You remember——

A. I do not remember positively. I think it was.

143 Q. But do you remember that he bought the lot from Mr. Porter?

A. I think that was the gentleman's name.

Q. Is this lot vacant now?

A. It is not.

Q. How is it improved?

A. By a dwelling—brick dwelling.

Q. By whom was that building constructed?

A. By an architect by the name of John Myers.

Q. Who employed John Myers to construct the house?

A. I employed him.

Q. At what price? What did you agree to pay Myers for the construction of this house?

A. Five thousand nine hundred and something.

Q. At the time that you entered into this contract with Myers, had you any money of your own?

A. I had some.

Q. How much?

A. Well, I had an interest. I could not tell what it was—what amount.

Q. Had you any money of your own?

A. I had no ready money. I had a few hundred dollars.

Q. How many hundred?

A. Two or three hundred.

Q. At that time you had an interest in a piece of property on 5th street as the widow of your first husband, Robert E. Moore?

A. I had.

Q. He died intestate, without issue or descendants, and that property vested in his brothers?

144 A. It did.

Q. Afterwards those brothers quitclaimed or conveyed to you their interest in the property?

A. They did.

Q. Thereby vesting its whole title in you?

A. That was it.

Q. And independent of that property acquired in this way and this property in controversy you have never had and have not now any other means or property whatever?

A. I have not.

Q. Under the terms of your contract with the builder, Myers, for the construction of the houses on the lot in controversy in this suit, how were the payments to be made?

A. That I could not tell. He agreed to put the house there, but the contract I could not tell what was in it. I never read it over.

Q. Did you sign the contract?

A. I signed a paper that may have been a contract, but I do not know. I could not say positively that it was.

Q. Where is that contract?

A. I suppose it is with some papers. I do not know where it is.

Q. Was it executed in duplicate?

A. I think it was.

A. You kept one and the builder the other, is that it?

A. I think that was it.

Q. Where is yours?

A. Well, I cannot tell just where mine is.

145 Q. When did you last see it?

A. This winter. I had it with some papers.

Q. Did you ever show it to your counsel?

A. I did not. I had none. What do you mean?

Q. Did you ever show it to your counsel, Mr. Elliot?

A. I did.

Q. Will you produce it, Mr. Elliot?

Mr. EL-IOT: Certainly.

Mr. EDWARDS: Have you it here?

Mr. ELLIOT: No, sir; I have got the contract.

Counsel for the defendant admits the contract in question was delivered to him by the witness, his client, and will produce it.

Q. And you have no recollection as to how the payments were to be made under the contract for the construction of this building, which was to cost you, as you say, some $5,000?

A. I think not.

Q. You do not remember whether it was to be paid in installments or when completed?

A. Part, I think, was to be paid when it had progressed a certain way, and then at the completion. That is what I understood of it.

Q. Is it not your recollection that as the work progressed from time to time on the certificate of the architect whom you had employed to superintend it and to prepare your drawings the money was to be paid to the builder?

A. I did not at that time.

146 Q. That is not your recollection?
A. No, sir.
Q. And do you say that that was not agreed to?
A. It was agreed to pay him when he presented his certificate for money, and I suppose that that was the way. I took no notice of it.
Q. Is it not your recollection that the money to pay the builder for this work as it progressed was to be delivered to him on his presenting you with or furnishing you with certificates of the architect that the work had progressed according to the contract?
A. I thought that was the way it was to be done. I thought he would bring it to me—his certificate.
Q. Well, when were you first called upon for any money towards the construction of this building?
A. Well, I was not called on for any at all.
Q. Did you not think it strange?
A. Well, I thought so, but it seemed that Mr. Woodward was paying it off at that time, but had not paid it for some time, as they did not allow him to pay money until the building had progressed.
Q. You knew that as the work progressed under your contract the builder was entitled to his pay?
A. Well, I did not know how far.
Q. And yet you say you made no inquiry or investigation as to how he was getting money?
A. I did not, as I did not read the contract. I had no knowledge as to how it was to be paid or at what time or how
147 far the building was to progress before it was to be paid.
Q. How far had the building progressed before you made any inquiry as to how this builder was being paid for this work?
A. I do not remember that.
Q. You cannot say?
A. I cannot remember.
Q. Did you ever go to Mr. Myers, the architect, to inquire of him concerning it?
A. I went several times and he was not in.
Q. Did you never see him?
A. I saw him when it was near done.
Q. And never saw him but once?
A. I do not think I saw him more than once or twice.
Q. Did you ever write to him?
A. I do not remember that.
Q. Did you ever receive any letters from him?
A. I did not.
Q. Were you ever called upon by the builder for money?
A. No, sir; I was not.
Q. Did you ever go to see the builder?
A. I did not.
Q. Did you ever go on the property or inspect the building as the work progressed?
A. I was up there when it was nearly done.
Q. Who went with you?

A. The architect.

Q. Mr. Myers?

148 A. Yes, sir.

Q. When it was nearly done?

A. Yes, sir.

Q. Did you ask him how much was due the builder?

A. I did not.

Q. Did you ask the builder how much was due him?

A. I did not.

Q. And at that time you had no knowledge of how the builder had been paid?

A. I had not.

Q. And never had made any inquiry?

A. No, sir.

Q. When and how did you first learn that the builder had been paid any money towards the construction of this building out of the money you borrowed on this deed of trust in question?

A. By his telling me that he had not any trouble getting the money; that he went to Mr. Woodward and he paid it over to him very gladly.

Q. Who told you?

A. The builder did, or architect. I do not remember which one of them.

Q. Try and refresh your recollection.

A. I think it was the architect.

Q. You think it was the architect?

A. Yes, sir.

Q. Did he get any money?

A. He sent for it, I think.

149 Q. What is it?

A. I think that he sent for it. It was his order.

Q. Sent where?

A. To Mr. Woodward. I think that is what he said.

Q. He told you that?

A. Yes, sir.

Q. When?

A. When the house was nearly done, I think.

Q. Had he informed you of the methods that had been adopted to get the money into the builder's hands?

A. He did not.

Q. Did you not know?

A. I knew that he had gotten the money, but I do not know with what authority he got it or how he got it or what right he had to get it that way.

Q. Did you complain to Mr. Woodward about the distribution of this money?

A. I did not until it was too late. All the money had been spent.

Q. Did you go to Mr. Woodward to inquire of him anything about the distribution of the money?

A. I did at one time.

Q. When was that?

A. In March.

Q. Was that before or after this conversation with Mr. Myers, the architect?

A. Just after.

Q. Up to the time this suit was commenced did you know
150 of a dollar of money that was expended in the construction of this building on the lot in controversy on 19th street except from the moneys that were loaned to you, as represented by this deed of trust?

A. I do not understand what you mean.

Q. Up to the time this suit was commenced did you know of a dollar of money that was expended in the construction of this building on the lot in controversy, on 19th street, except from the moneys that were loaned to you as represented by this deed of trust?

A. Well, if I should judge from the liens that was on the property I should not think that much of it did go in it.

Q. I am asking you if you know of any other moneys.

A. I do not know of any.

Q. You did not pay a dollar?

A. I did not.

Q. You did not authorize a dollar of it to be paid?

A. I did not.

Q. And you had no means to pay it with?

A. I did not.

Q. You were a party, were you not, to a deed of trust given by your husband in 1887 to secure the portion of the balance representing the unpaid purchase-money for this 19th-street lot?

A. For $1,250. I was.

Q. You mean $1,600.

A. For the $1,600; yes, sir.

Q. That we might have this clear, the $1,200 was the deed of trust that was on it, which was assumed, and you were a
151 party to the deed of trust with your husband to secure the other amount, $1,600. That is true, is it not?

A. Yes, sir.

Q. Exhibit "M. N. R. No. A" has been given in evidence and you say it is a statement furnished to you by Mr. Frank T. Rawlings, and that it is in his handwriting. When did you receive that paper (handing it to the witness)?

A. October 31 it is dated.

Q. Did you receive it at or about its date?

A. About that time.

Q. State, if you can, wherein that paper is incorrect.

A. Well, Mr. Rawlings' commission here is represented $240.00, three per cent., and then commission on the other paper is $180.00 and some other figures that I do not understand, and Mr. Woodward's legal services $15.00, and the other is $62.00, and that is about all I think I said.

Q. Did you have any contract with Mr. Rawlings as to what you would pay him for negotiating that loan for him?

A. He said he would charge me three per cent.

Q. And did you not agree to pay it?

A. I think I did.

Q. Then wherein is that charge incorrect?

A. Well, it was a larger commission than he should have charged. He took advantage of my inexperience that I did not know at that time what was the regular commission.

Q. And that is your complaint as to that item?

A. That is.

Q. Mrs. McGreal, you evidently misunderstood my question when I handed you this Exhibit "M. N. R. No. A," for you men-
152 tioned items that do not appear in it. Now, I ask you again to point out specifically wherein this statement is incorrect.

A. That statement is perfectly correct. That statement is correct.

Q. By this statement *it* appears the following entry:

"Am't in hands of Wm. R. Woodward..... $4,708 01"

What did you understand by that item?

A. "$4,708.01"? What was left after paying the expenses of the two notes and other expenses on the lot.

Q. That was the balance after settling the expenses and taking up the prior incumbrance?

A. It was.

Q. Did you ever go to Mr. Woodward for that money?

A. I did not.

Q. Why not?

A. Because when he (Rawlings) finished paying the amount that is on that statement he said that there would not be any more advanced until the building had progressed some.

Q. Who told you that?

A. Mr. Rawlings.

Q. And was that the only reason why you did not go to Mr. Woodward to inquire about this balance of $4,708.01?

A. I supposed that when they had made up their minds to let me have it I would be notified.

Q. But you never made any inquiry of Mr. Woodward?

A. No, sir. Mr. Rawlings told me that they would not allow me any more money.

153 Q. Had you entered into your contract with Myers to construct this house at the time that you received this statement from Mr. Rawlings, "Exhibit M. N. R. No. A"?

A. I think I had. I had given him the order to build the house. I did not know that any contract or any papers had been signed.

Q. Do you not know whether or not the house was commenced before you received this paper from Mr. Rawlings?

A. I did not.

Q. What is your recollection?

A. I think it was commenced about the first of November some time.

Q. It was very soon after?

A. I think so.

A. In March.

Q. Was that before or after this conversation with Mr. Myers, the architect?

A. Just after.

Q. Up to the time this suit was commenced did you know
150 of a dollar of money that was expended in the construction of this building on the lot in controversy on 19th street except from the moneys that were loaned to you, as represented by this deed of trust?

A. I do not understand what you mean.

Q. Up to the time this suit was commenced did you know of a dollar of money that was expended in the construction of this building on the lot in controversy, on 19th street, except from the moneys that were loaned to you as represented by this deed of trust?

A. Well, if I should judge from the liens that was on the property I should not think that much of it did go in it.

Q. I am asking you if you know of any other moneys.

A. I do not know of any.

Q. You did not pay a dollar?

A. I did not.

Q. You did not authorize a dollar of it to be paid?

A. I did not.

Q. And you had no means to pay it with?

A. I did not.

Q. You were a party, were you not, to a deed of trust given by your husband in 1887 to secure the portion of the balance representing the unpaid purchase-money for this 19th-street lot?

A. For $1,250. I was.

Q. You mean $1,600.

A. For the $1,600; yes, sir.

Q. That we might have this clear, the $1,200 was the deed of trust that was on it, which was assumed, and you were a
151 party to the deed of trust with your husband to secure the other amount, $1,600. That is true, is it not?

A. Yes, sir.

Q. Exhibit "M. N. R. No. A" has been given in evidence and you say it is a statement furnished to you by Mr. Frank T. Rawlings, and that it is in his handwriting. When did you receive that paper (handing it to the witness)?

A. October 31 it is dated.

Q. Did you receive it at or about its date?

A. About that time.

Q. State, if you can, wherein that paper is incorrect.

A. Well, Mr. Rawlings' commission here is represented $240.00, three per cent., and then commission on the other paper is $180.00 and some other figures that I do not understand, and Mr. Woodward's legal services $15.00, and the other is $62.00, and that is about all I think I said.

Q. Did you have any contract with Mr. Rawlings as to what you would pay him for negotiating that loan for him?

A. He said he would charge me three per cent.

Q. And did you not agree to pay it?

A. I think I did.

Q. Then wherein is that charge incorrect?

A. Well, it was a larger commission than he should have charged. He took advantage of my inexperience that I did not know at that time what was the regular commission.

Q. And that is your complaint as to that item?

A. That is.

Q. Mrs. McGreal, you evidently misunderstood my question when I handed you this Exhibit "M. N. R. No. A," for you men-
152 tioned items that do not appear in it. Now, I ask you again to point out specifically wherein this statement is incorrect.

A. That statement is perfectly correct. That statement is correct.

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What did you understand by that item?

A. "$4,708.01"? What was left after paying the expenses of the two notes and other expenses on the lot.

Q. That was the balance after settling the expenses and taking up the prior incumbrance?

A. It was.

Q. Did you ever go to Mr. Woodward for that money?

A. I did not.

Q. Why not?

A. Because when he (Rawlings) finished paying the amount that is on that statement he said that there would not be any more advanced until the building had progressed some.

Q. Who told you that?

A. Mr. Rawlings.

Q. And was that the only reason why you did not go to Mr. Woodward to inquire about this balance of $4,708.01?

A. I supposed that when they had made up their minds to let me have it I would be notified.

Q. But you never made any inquiry of Mr. Woodward?

A. No, sir. Mr. Rawlings told me that they would not allow me any more money.

153 Q. Had you entered into your contract with Myers to construct this house at the time that you received this statement from Mr. Rawlings, "Exhibit M. N. R. No. A"?

A. I think I had. I had given him the order to build the house. I did not know that any contract or any papers had been signed.

Q. Do you not know whether or not the house was commenced before you received this paper from Mr. Rawlings?

A. I did not.

Q. What is your recollection?

A. I think it was commenced about the first of November some time.

Q. It was very soon after?

A. I think so.

Q. *Do* you borrow this money for the purpose of paying off this incumbrance and to save your property from the threat of foreclosure for default and to construct a building upon it?

A. I borrowed the money for that purpose.

Q. Did you know of your own knowledge that there has been a dollar of this $88,000.00 represented by this deed of trust that has not been expended for the purpose I have mentioned?

A. That I could not state.

Q. I suppose, Mrs. McGreal, that you spoke to Mr. Woodward about building the house on the lot?

A. I spoke to him about building the house.

Q. And you did not expect or apply for a loan of $8,000 on the lot alone?

154 A. Well, I did not understand business well enough to know anything about it. I know it is done.

Q. Did you expect or did you apply to Mr. Rawlings for a loan of $8,000 on the security of the lot alone?

A. Yes, sir; when there is a house you might say that is under way they generally allow a person that money.

Q. But there was no house on the lot at that time.

A. But there was not any money advanced until there was a house partly advanced.

Q. Well, you did not apply for this loan but on the fact that there was a house to be built on it?

A. I borrowed it with the intention of building.

Q. And therefore, the money being applied to the construction of the house, that made the security ample, in your judgment. Was that it?

A. It would have if they had seen that the money went into it.

Q. And did you make any inquiry as to what was going in?

A. I did not.

Q. Did you request any one to do so?

A. I did not.

Q. Why not?

A. I did not know who to request. Who should I?

Q. You considered yourself competent to judge of your own affairs, did you not, as far as that building was concerned?

A. I suppose I was.

Q. Your mother was living with you?

155 A. My mother was in the same house with me.

Q. And you and she talked together about the matter from time to time?

A. I suppose that she understood that I was about to build a house.

Q. You talked together about it freely?

A. No; I do not know that there was a great amount said about it.

Q. She went with you to see the house from time to time, to see it as it was constructed?

A. I did not go to see the house.

Q. Did not your mother?

A. No, sir.

Q. Did she not go to see the house during this time?

A. Not until it was nearly finished, I do not think.

Q. When this loan was negotiated there were certain unpaid taxes on this lot, two, were there not?

A. I think there was one. The statement shows payment of one bill.

Q. You identify the bill here that is filed, marked Exhibit z No. 2, with the complainant's depositions as that included in Mr. Woodward's statement that I have called your attention to?

A. Yes, sir.

Q. Did you ever pay a dollar to your architect, Mr. Myers?

A. I did not.

Q. Do you know whether or not he has been paid anything?

A. He was paid by Mr. Woodward, I suppose.

Q. And who gave Mr. Woodward the order to pay him?

156 A. That I do not know.

Q. How did you learn that he was paid by Mr. Woodward?

A. Because he said so.

Q. When did he tell you that?

A. He told me that when the building was nearly done.

Q. Did he tell you that at the time that he got the money?

A. I do not remember that he did.

Q. Do you know when Mr. Woodward paid Mr. Myers, your architect, any money and how much he then paid him?

A. He paid him an order that I sent him for $175. Do you mean that?

Q. Then you did send him?

A. I gave an order for that.

Q. And that order was to Mr. Woodward?

A. It was.

Q. Why did you sign that order to Mr. Woodward?

A. I gave him the order, but I did not know that he would get it. I knew that Mr. Woodward had the papers and all my money, and I thought I could get it and when I wanted it.

Q. Is that your only explanation for giving Mr. Myers an order on Mr. Woodward for $175?

A. Yes, sir; I knew that he had my money, as I thought.

Q. Is this the order on Mr. Woodward that you refer to, marked as "Exhibit F" with the complainant's deposition, which I hand you?

A. It is.

Q. Did you ever ask Mr. Woodward whether or not he ever paid that?

A. I did.

157 Q. Did he tell you?

A. He said that he had and that he was very sorry for doing it. It was that much over the amount that he was entitled to.

Q. Have you ever paid any interest on this loan?

A. I paid one quarter's interest.

Q. How much?

A. $120.00.
Q. Where did you pay that?
A. Paid it to Mrs. Taylor.
Q. Mrs. Rose M. Taylor?
A. I did.
Q. She you understood to be the wife of Leroy M. Taylor?
A. I did.
Q. He is one of the trustees named in the deed?
A. That I do not know. I did not know the trustees.
Q. But it was at her residence, on Massachusetts avenue between 12th and 13th streets?
A. It was.
Q. When the next instalment interest came due what did you do?
Q. They notified me that it was due, and I sent word to her as I had not gotten any of the money I did not see—I did not wish to pay anything out of my own money, and I sent her word to collect it of Mr. Woodward.
Q. What had Mr. Woodward to do with it?
A. He had all of my money, and I supposed he was the best one to pay it.
158 Q. How did you communicate that direction or request to Mrs. Taylor?
A. I sent it in a letter.
Q. Is this the letter, marked Exhibit *e e* with complainant's deposition, that you refer to?
A. It is.
Q. You signed it and your present husband wrote it?
A. He did, and I signed it.
Q. After writing that letter you received a letter from Mr. Woodward, did you not?
A. I did.
Q. And that is the letter of April 25th, 1890, marked Exhibit *f f* with complainant's depositions, which I show you?
A. I do not remember.
Q. Do you say that you cannot identify this letter?
A. I cannot.
Q. Do you say that you never received it?
A. I received one. I cannot say that that is the same thing that I received.
Q. What did you do with the letter that you did receive after you got it?
A. I cannot tell. It may be with some papers or may not. I do not know where it is.
Q. What did you do after you received it?
A. Well——
Q. Did you go to see Mr. Woodward?
A. I did not. I thought it very strange and did not understand it. I took advice of my lawyer.
Q. Who was your lawyer?
159 A. Mr. Darlington for awhile was my lawyer.

Q. Whose advice did you first take?

A. Mr. Darlington'-.

Q. How long was it after you received this letter from Mr. Woodward I have just shown you that you took advice of counsel?

A. I had before on other occasions; that they had threatened liens before that.

Q. I am referring to this particular matter.

A. About the same time.

Q. Did you do nothing else concerning the matter of this account sent to you by Mr. Woodward, under date of April 26th, 1890, to which I have called your attention than to consult counsel?

A. I did.

Q. What did you do?

A. My husband went down and offered him the balance of the amount to make up the amount of the interest, and he would not take it.

Q. You mean your present husband, Mr. McGreal?

A. Yes, sir.

Q. Was that by your authority?

A. It was.

Q. You and he talked about the matter?

A. We did.

Q. Ever since your marriage he has been familiar with your affairs touching this house?

A. I do not think that he was; until just at that time I do not think that he knew anything about it.

160 Q. And do you assert that up to the time that this letter was written to you by Mr. Woodward that your husband knew nothing about your affairs concerning this house?

A. He knew that I had the house. He had not entered into it at all. He had not taken much interest in it and was not very much concerned about it.

Q. Do you say that he did not know anything about the condition of your title to that property and its encumbrance up to the time of this letter of April 26th, 1890, was written?

A. Very near about the time, it was.

Q. How long before?

A. About a week or so; something like that.

Q. And up to within a week or so before you say that he was acquainted with the condition of the title to this 19th-street property and its encumbrance?

A. It was.

Q. You never told him anything about it?

A. I had spoken partly of the business; nothing very much.

Q. You never had told him anything about the title to this property or its encumbrances up to the time you mentioned, namely, a week or so prior to the receipt of this letter of April 26th, 1890, from Mr. Woodward?

A. I did not.

Q. That is so?

A. That is so.

Q. Did you do anything else concerning the statement of accounts of April 26th, 1890, than to consult your lawyer and send your husband to pay the balance of the interest as you have stated?

A. I do not understand what you mean.

161 Q. Did you do anything else concerning the statement of accounts of April 26th, 1890, than to consult your lawyer and send your husband to pay the balance of the interest as you have stated?

A. After that he sent up a statement offering me the $93.00, a statement that if I had signed it would have stated that I was perfectly satisfied with how it was disbursed and conducted and all, which under my lawyer's advise I did not sign.

Q. I am not asking what else Mr. Woodward did. I am asking what else you did.

A. I did nothing then.

Q. Did you not write to Mr. Woodward?

A. I do not remember that I did.

Q. Think a minute.

A. Yes, sir; I wrote him a note and told him to keep the $93.00 until he heard from me.

Q. And that note is Exhibit "G" with complainant's deposition, is it not?

A. It is.

Q. Who did you send that by?

A. It was sent by mail, I think.

Q. Since you wrote that letter have you ever applied for this balance of $93.01 referred to in this letter?

A. I have not.

Q. You have stated something about the insurance that was placed on this building by Mr. Rawlings. Do you not remember of him and you talking about the necessity or propriety of placing what is termed a builder's risk while the house was being constructed?

A. I think that there was such a thing as that.

Q. That was between you and Mr. Rawlings?

A. It was not.

Q. Who was it between?

162 A. I think it was between the builder. I think he must have taken it out and seen the builder about it.

Q. But you knew there was a builder's risk?

A. I suppose there was.

Q. Did you not know it?

A. You might say I did know it.

Q. Whom did you learn it from?

A. Well, I think I have heard people say that there had to be one put on a piece of property.

Q. I am speaking about your own matter.

A. I may have heard the architect say so. I may have heard the builder. I do not remember.

Q. Did you not know and was it not with your authority that a builder's risk was taken out on this house before it was built?

A. It was not. I am most positive.

Q. And do you say that you did not kn-w the fact that a builder's risk had been taken out before the house was built?

A. I did not know there was one.

Q. Who paid off that insurance?

A. That I do not know.

Q. Then what was said, if anything, about the insurance of the property after the house was completed?

A. He asked me to allow him to insure the house in his company.

Q. Was not that mentioned at the time, or had it not been previously mentioned?

A. It was mentioned at first; he said, I suppose you would not have any objection to me having it in my company? That was al-

there was said of it.

163 Q. And that was agreed to?

A. Yes, sir; I had not any.

Q. And the trouble between you and Mr. Rawlings about the insurance was that you complained about it being five when you thought it should be three years?

A. I thought that he should have come up to see me about it when he was about to take it.

Q. Did he not explain that by this method of five years you saved considerable?

A. I was not thinking about saving. The money was borrowed for three years. I did not care about insuring it longer.

Q. I simply ask you if he did not.

A. He did.

Q. And it was finally adjusted between you?

A. No, sir; it was not satisfactory at all.

Q. Then your complaint is two years' insurance?

A. It was.

Q. And what would that amount to, do you know?

A. Forty dollars, I think.

Q. Two years—you say it should have been for three years, but it was five years. Do you know what the actual difference would have been in money?

A. I do not.

Q. Did you ever ask him?

A. I have not.

Q. I call your attention to a letter dated April 21st, 1890, addressed to Mr. Woodward, marked "Exhibit B B;" what do you know about that? First, I will ask you in whose handwriting it is.

164 A. It is Mr. McGreal's.

Q. What do you know about that?

A. That is a note that I sent him when I was notified by the builder that the risk had expired and that he was threatened with liens at that time, and I considered the property in danger, perhaps.

Q. You authorized your husband, Mr. McGreal, to write that letter to Mr. Woodward?

A. I did.

Q. And you signed your name to it?

A. I did.

Q. What is meant by this provision, "I would suggest such action in the premises regarding the insurance as is warranted in your position as representative of Mrs. Taylor;" what relation was this insurance to bear to the money you had obtained on the security of this deed of trust?

A. Well, that I do not know.

Q. Was it not intended to be additional security for the money represented by the loan?

A. I had no such understanding.

Q. Then, what did you mean by this provision which I have just read to you?

A. That I could not explain.

Q. Why was it necessary to write to Mr. Woodward at all about it?

A. He had the money; he had all the money that there was.

Q. Did you intend by that that he should pay the insurance out of the money in his hands?

165 A. I did.

Q. And he did?

A. He did.

Q. Was not it a condition at the time this loan was negotiated through Mr. Rawlings that when the building was completed it should be insured and the loss made payable to the trustees to secure the loan in the ordinary way?

A. Well, I had not any such understanding as that.

Q. Do you say that that was not the case?

A. I understood that it was to be insured, but I did not understand any further than that.

Q. There was nothing said that the house was to be insured as additional security for the loan?

A. I do not remember that there was.

Q. I wish you to be very careful about that and tell me your best recollection.

A. I have none of it.

Q. Will you assert that it was not so?

A. It was not, so far as I am concerned.

Q. That is your recollection?

A. That is my recollection.

Q. Then, in the face of what you now say, I ask you again to tell me what was meant by the last two lines in this letter which was sent to Mr. Woodward under date of April 21, 1890.

Mr. ELLIOT: I object. The witness has already answered the question three times.

A. I cannot state what my husband mean- in writing that
166 letter. He may have meant something by it that I did not understand.

Q. When you went to Mr. Rawlings to secure a loan you wanted just $8,000.00?

A. I did.

Q. For three years?

A. Well, that was the shortest time that they would loan it or they preferred to loan it about that time.

Q. The time was agreeable?

A. It was.

Q. The rate of interest was fixed?

A. It was.

Q. And how it was to be payable—quarter yearly?

A. I did not know that.

Q. But did you pay it quarter yearly?

A. I paid it; yes, sir; when it was due.

Q. Without complaint?

A. There was not that understanding first, though.

Q. Did you not pay it without complaint?

A. I did.

Q. You said nothing about it at the time you were paying Mrs. Taylor, did you?

A. I said I understood it was semi-annually. I did not know it fell due. I was very much surprised when I was notified that it was due.

Q. You told Mr. Rawlings that you were the owner of this piece of ground on 19th street—described it when you applied for the loan?

A. I did.

167 Q. Told him that the title was all right, and that you wanted to give that lot as security?

A. As far as the title—that was not mentioned. I said I was the owner of it.

Q. And you intended to give it as security for the loan, did you not?

A. I did.

Q. And your mother went with you on that occasion?

A. She was with me one time.

Q. How many times did you call at Mr. Rawlings' office before the transaction was closed?

A. I did not call there but once.

Q. He called on you?

A. He did.

Q. Saw you and your mother both?

A. No, sir; he did not.

Q. Saw you alone?

A. Saw me alone.

Q. And your mother alone?

A. He did not see her at all except the one time about the insurance.

Q. Then he did see her about the insurance?

A. Yes, sir; left word with her, at least, for me.

Q. Your attention has been called on direct examination to the

statement sent you by Mr. Woodward and given in evidence in the complainant's deposition. Now, I wish you to tell me wherein the aggregate of the disbursements by Mr. Woodward shown in his statement of April 26th, 1890, and that furnished you by Mr. Rawlings under date of October 31st, 1890, differ.

168 A. It is about the same thing.

Q. Is it not precisely the same thing?

A. I do not know that that column will add up the same.

Q. I do not want you to be uncertain as to your testimony. Look at the aggregate of the disbursements in the statement of Mr. Rawlings. It amounts to $3,276.99, and $3,291.99 appears in Mr. Woodward's, and the balance that was shown to be in Mr. Woodward's hands in both statements are the same, are they not?

A. To all appearances seems to be the same words. There is $4,708 that is supposed to be in his hands, and each account adds up different. There is a difference in all of them.

Q. Is it not a fact, I say, that the balance shown in Mr. Woodward's statement under date of April 26th, 1890, which you received from him, and that of Mr. Rawlings are identical—namely, $4,708.01?

A. That is what appears.

Q. I call your attention to the original deed of trust, marked Exhibit D D with complainant's deposition, to secure this $8,000.00.

A. That is it.

Q. You signed that?

A. I did.

Q. And the signature Carlotta M. Moore to this paper is in your handwriting?

A. It is.

Q. And you acknowledged this deed of trust before Mr. Rawlings as a notary public?

A. I did.

Q. And you delivered it to him when it was executed?

A. I did.

169 Q. To be delivered to the parties loaning the money as security for the money represented by this deed of trust?

A. I suppose that was the idea.

Q. Was not that your object?

A. That was my object.

Q. You were acting in good faith?

A. I was.

Q. You intended by that deed of trust to secure this money on this property?

A. I did.

Q. Did you ever change your mind in this direction—in respect to this; if so, when and under what circumstances?

A. When I did not get the money and when things turned out as they did and I was forced to do it.

Q. Who forced you?

A. Different circumstances forced me to it.

Q. First tell me when you first changed your mind concerning the object of the execution of this deed of trust, as you have stated.

A. When I considered that Mr. Woodward had paid the money out recklessly and liens were filed against me.

Q. Are those your only reasons?

A. My only reasons; that I was not fairly dealt with at all in the matter.

Q. By whom?

A. By any of the parties.

Q. Name one.

170 A. By the people loaning the money and by Mr. Woodward or by any one that had anything to do with it.

Q. In what respect had any of the parties loaning the money not treated you fairly?

A. Because I did not get it and the money was not well spent.

Q. Is that your only complaint?

A. That is.

Q. Did you ever tell Mrs. Taylor or any one else holding this note of yours, or did you ever make any complaint to Mr. or Mrs. Taylor or any one representing the holder of this note concerning the receipt of the money?

A. I did not. I did not know who the parties were.

Q. Did you ever make any complaint to Mr. Woodward?

A. I did at the proper time.

Q. When was that?

A. When I gave notice.

Q. When was that?

A. Some time in June.

Q. 1890?

A. 1890.

Q. What time in June?

A. About the middle, I should say.

Q. You would have been of age, according to your own testimony, at what time in June?

A. The 20th of June.

Hereupon the further taking of testimony in this case was
171 adjourned until March 23rd, 1891, at the hour of 1 o'clock p. m.

MASON N. RICHARDSON,
Examiner in Chancery.

172 WASHINGTON, D. C., *May 4th*, 1891—1 o'clock — m.

Met, pursuant to agreement of counsel, at the offices of Charles A. Elliot, Esq., "Fendall building."

Present: Charles A. Elliot, counsel for the respondent-; Messrs. Edwards & Barnard, for complainants; the examiner, Mason N. Richardson, and the witness Carlotta M. MacGreal; and whereupon the cross-examination of CARLOTTA M. MACGREAL was continued by Mr. EDWARDS:

Q. Mrs. McGreal, I observe that one of the questions I asked you on cross-examination at the last session seems to be rather indefinite and unintelligible. It is as follows: "Well, you did not apply for this loan but on the fact that there was a house to be built on it?" To which you reply, "I borrowed it with the intention of building." What I meant to ask you was this: You did not apply for this loan from the complainant on the security of the lot alone? You also represented that a house was to be built on the lot, did you not?

A. I did.

Q. When you married your first husband, Mr. Robert E. Moore, he owned this 5th-street house we have been speaking about, did he not?

A. He did.

173 Q. And you remember the following year joining with him in the execution of the deed of trust to William E. Edmonston and Mr. Francis B. Mohun to secure one thousand dollars that your husband had borrowed about that time?

A. I do not remember the one thousand dollars.

Q. How much was it?

A. There was three thousand dollars, I think.

Q. Three thousand dollars that he borrowed on the 5th-street house?

A. I think it was that.

Q. But you do remember the fact that he did execute a deed of trust to borrow certain moneys about a year after you were married to him?

A. I think that was about the time. I am not certain, though.

Q. Now, you have mentioned also about applying to Mr. Taylor for another loan after you negotiated this $8,000.00 loan in controversy and you say you did not get it. Now, did you not thereafter apply to Mr. William E. Edmonston for the same money?

A. I did not. I asked for it before. I asked for it before.

Q. You did ask for it before?

A. I asked for it before I saw Dr. Taylor. I asked Mr. Edmonston first. He held the loan and I preferred to have it kept in the same hands.

Q. Well, you had not closed the matter of the second loan with Mr. Edmonston at the time that you applied to Dr. Taylor for it, had you?

A. I had not.

174 Q. Why not?

A. Because he had not given me any answer.

Q. You afterwards went back to him again?

A. I think he notified me, if I am not mistaken.

Q. And you went to him to get $500 more?

A. I did.

Q. And you secured that also, Mrs. McGreal, did not you, by a deed of trust on this same 5th-street house about December, 1889?

A. I did.

Q. You have also stated that on the purchase of the 19-street lot

in question by your husband, Mr. Moore, that you joined with him in the execution of a note or notes representing the balance of the purchase-money and also the deed of trust to secure it. That is correct, is it not?

A. I joined on one note and deed of trust, one note. I did not join in the deed of trust. There was not any deed of trust on the note. I do not think on the note that he assumed. He assumed it by himself.

Q. But you do remember, do you not, that for the purchase of the money of this 19th-street lot you and your husband signed a note?

A. The best I can remember, I did.

Q. And you secured that note by a deed of trust executed by both of you, did you not?

A. I suppose I did.

Q. Is not that your recollection?

175 A. I suppose that is about the best I can remember.

Q. The 19th-street lot was purchased from Mr. Henry C. Porter, was it not?

A. It was.

Q. Now look at the promissory note, marked Exhibit D with the complainant's deposition, and tell me if it is not the note that we are now speaking about.

A. It is the note, I suppose. I have nev-r seen it before, since it has been paid.

Q. But this note, Exhibit D, to the order of Henry C. Porter, for $1,600, bears your signature, does it not?

A. Yes, sir.

Q. And also that of your first husband, Robert E. Moore?

A. It does.

Q. And that is one of the notes taken up with the money of Mrs. Utermehle, through Mr. Rawlings, from this $8,000 loan, is it not?

A. It is.

Mr. ELLIOT: I object to this line of cross-examination as not being responsive to anything in the examination-in-chief and as pertaining to matters already proved in the case and by the defendant- admitted.

Q. At the last session you referred to a letter written by Mr. William F. Mattingly to you concerning a certain advertising bill. Your counsel, Mr. Elliot, has produced the letter under date of 22nd October, 1889. Please state if this is the one that you spoke of at that time (exhibiting letter).

176 A. It is.

Q. Mr. Mattingly sent you that letter?

A. He did.

Q. What advertising bill does it refer to?

A. Refers to a bill for advertising in the "Star."

Q. The sale of this 19th-street lot, was it not, at auction?

A. It was.

Q. Under the Porter deed of trust?

A. It was.

Q. Mr. Mattingly had been your counsel previous to the writing of this letter, had he not?

A. He had.

Q. How was this advertising bill paid, do you remember?

A. I do not remember who paid it. Mr. Rawlings said he was going to pay it.

Q. Do you not know that it was paid out of this $8,000?

A. I do not know. I did not see any statement that it was paid out of it.

Q. You did not pay it, though?

A. I did not pay it.

Q. You know of no other means used to pay it than from the $8,000, did you?

A. I do not.

This letter is admitted by defendants' counsel to be wholly in the handwriting of Mr. William F. Mattingly and signed by him, and is now given in evidence, subject to the objection on the ground that it is utterly immaterial. The examiner is requested to mark the same Respondents' Exhibit "B."

177 Ex. "B." Mason N. Richardson, Examiner.

William F. Mattingly, attorney-at-law, No. 435 7th St. N. W., Washington, D. C.

Oct. 22d, 1889.

Mrs. C. M. Moore.

Dear Madam: While I do not think you are legally liable for the advertising bill, $26.63, yet under all the circumstances, as it would be cheaper for you to pay it than contest it and it is not unjust that you should pay it, I recommend its payment.

Very respectfully, W. F. MATTINGLY.

178 Washington, D. C.,
Jun- 17, 10.30 p. m.,
'90.

Mrs. Rose M. Taylor,
1221 Mass. Ave.,
Washington, D. C.

179 Q. You took steps, did you not, Mrs. McGreal, to prevent the sale of this lot under the Porter trust and employed Mr. Mattingly to represent you?

A. I did.

Q. And he instituted certain proceedings in court for that purpose?

A. He did.

Q. And that proceeding was brought by your mother, Mrs. Francis Burke, as your next friend?

A. It was.

Q. You authorized her to do that; it was with your consent?

A. I did not know anything about it; Mr. Mattingly attended to it; it was without my knowledge whatever.

Q. You have just stated that there was a suit brought to stop the sale?

A. Yes, sir.

Q. You knew that?

A. Oh, yes, sir.

Q. But you speak of the form of the proceedings?

A. Yes, sir.

Q. And that was the sale which was about to be made by the trustees under the Porter trust and this bill referred to in Mr. Mattingly's letter?

A. It was.

Q. Do you remember what was the result of the effort made by your attorney, Mr. Mattingly, to prevent the sale under the Porter trust by these proceedings in court?

180 A. I never understood it at all.

Q. Did you not learn that the court had refused to restrain the sale, and that your mother told you that?

A. No, sir; I did not know it. I supposed it had been. There was not any sale, but I did not understand it, though.

Q. Can you state the date that Myers, under your contract with him, claimed that he had completed the house?

A. The contract stated the first of April.

Q. Well, did he claim that he had completed it at that time?

A. He claimed it, I suppose.

Q. Did he come to you for the note for $1,530, which was provided to be paid, to be given by you under the terms of the contract?

A. He did.

Q. You never gave it to him?

A. No, sir; because I did not consider the house completed.

Q. Look at the paper which I now hand you, which was produced on notice by your counsel, and tell me if you can identify it.

A. I do.

Q. What is it?

A. It is a contract, I think.

Q. Between you and Mr. Joseph W. Myers concerning the building of this house?

A. It is.

Q. You signed it?

A. I did.

Q. And so did he?

181 A. I do not know that he signed it. I did not see him sign it.

Q. He commenced work on this house under this contract, did he not?

A. Yes, sir.

Q. A bond appears also to have been given, which is attached to the contract and forms a part of the same paper, to which I call your attention. Did you ever call upon the sureties on that bond to protect you in your contract with Myers?

A. I did not.
Q. You never have done anything?
A. I have not.
Q. You gave them no notice?
A. I do not know what notice would have been suitable to have given.
Q. But you did not?
A. I did not.
Q. You did nothing so far as the bond is concerned since Myers claimed to have completed the house?
A. I have not.

Mr. EDWARDS: I offer this contract in evidence, and the examiner will please mark it as Exhibit "C."
Mr. ELLIOT: I object to it as immaterial.

Q. Certain provisions appear in this contract as to how payments for the construction were to be made by you — certain *at* stages of the work and so on, to which I call your attention.
A. I see it.
182 Q. Did you ever inspect the house for the purpose of observing whether the house had progressed under the contract sufficiently to justify the payments?
A. Well, I do not know that I would be a sufficient judge. I do not know that I would be a judge of such things or not.
Q. But did you in fact?
A. I was at the house once or twice—several times.
Q. You will not limit yourself to being there but once or twice, will you?
A. No, sir.
Q. You felt interested in this house, of course, did you not?
A. I did.
Q. Greatly interested?
A. I do not know that I felt so greatly interested. I supposed that the work would go on just the same—go on all right.
Q. It was to be your home?
A. It was not.
Q. You built it for your own purposes?
A. I built for myself, but not for a home at all.
Q. How long after Myers claimed it was completed did you move into it?
A. The first of June, about 1890.
Q. You were then married to Mr. McGreal?
A. I was.
Q. You were married to him, then, while this house was being constructed?
183 A. I was.
Q. Did he ever go with you to look at it?
A. He has passed the house with me.
Q. You stopped and looked at it, have you not, together?
A. Yes, sir; I have stopped and looked at it.
Q. On more than once—one occasion?

A. Well, I have been walking in that direction several times and stopped just for a walk through. The building was closed.

Q. You did stop, however, in front of it?

A. I did.

Q. And he and you looked at it?

A. I did.

Q. "We" did?

A. We did.

Q. Of whom did your family consist when you moved in?

A. My family consisted of myself and husband. My mother was to come with me as company.

Q. No one else?

A. No one else.

Q. And you have lived there ever since?

A. I have.

Q. And live there today?

A. I do.

Q. Has any one besides you three occupied this house since it was completed?

A. They have not.

Q. One installment of interest was paid, I understand from your testimony, on this note, and that was paid by you to Mrs. Taylor?

184 A. It was.

Q. With that exception, since this loan was negotiated have you ever paid a dollar on account of that property?

A. I have not.

Q. No taxes?

A. No, sir.

Q. Or anything?

A. Nothing.

Q. Describe this building; give the number of rooms and how many stories and so on were in it; give a general description of it.

A. The house is a three-story brick, very inferior structure, and has nine rooms in it.

Q. With cellar?

A. With a basement. There is not a good job of work in the house.

Q. Were there not two houses being constructed at the same time and this one and the adjoining one are identical?

A. There was not.

Q. It is built independent?

A. It was.

Q. Before or after the adjoining house on the north?

A. After.

Q. Do you remember the grounds or reasons that were presented or set forth in the application to the court to stop the Porter sale—to stop the sale under the Porter trust?

A. I do not.

Q. Do you not know that it was your minority?

185 A. I think that was it.

Q. Do you not know that that was the case?

A. The best that I can remember of it, I think that it was.

Q. You heard it discussed at the time, did you not?

A. Well, very little.

Q. But you and your mother did speak of it?

A. Yes, sir; I think so.

Q. This effort to stop the Porter sale was not very long before you applied for this $8,000, was it? It was in the same year, was it not?

A. It was the same year.

Q. What changes, if any, since this bill has been filed have taken place in the title to this property—to the property in question?

A. My disaffirmance of my contract.

Q. Anything else?

Mr. ELLIOT: I object to that, as the record is the best evidence of the condition of the title.

A. The liens filed on the property.

Q. Anything else, to your knowledge?

A. Nothing as I know of.

Q. You mean by disaffirmance of your contract your disaffirmance of this note and deed of trust in question, do you not?

A. I do.

Q. And you attempted also a disaffirmance of Myers' contract, have you not?

A. I mean the whole contract.

Q. The whole business?

186 A. Yes, sir.

Q. Did you intend to do that when you first executed this deed of trust and note?

A. I did not.

Q. I asked you at the prior session of the time when you first made up your mind to disaffirm and to attempt to evade the payment of this obligation—of the obligation represented by this $8,000 note and mortgage. I wish you would, if you can, give me the exact time that you first concluded to do that.

Mr. ELLIOT: I object. The intention of the witness in making the contract or when she concluded to disaffirm it is entirely immaterial if she has a legal right to such disaffirmance.

A. After the liens had been filed and I had taken advice from my lawyer.

Q. Well, that was after the second installment of interest on this note became due, was it not?

A. It was about that time.

Q. Was it not after it became due and you had——

WITNESS: May I ask when it did become due?

Mr. EDWARDS: April was the second installment.

WITNESS: What year?

Mr. EDWARDS: April, 1890. The second installment under the provisions of the note became due April 22nd, 1890. Now, was it before that date?

A. It was. It was just after the liens had been filed. They had threatened liens.

187 Q. Were those filed, in point of fact, Mrs. McGreal, before the 22nd of April, 1890, according to your recollection?

A. I do not remember.

Q. The house was completed, was claimed to have been completed, according to your testimony, on the first of April, 1890?

A. It was.

Q. Now, how long was it after this, according to your recollection, that the liens—any of the liens—were filed?

A. They threatened liens immediately.

Q. I understand that you did meet Mrs. Leroy M. Taylor, the daughter of Mrs. Uttermehle, in person, when you paid the first installment of interest?

A. I did.

Q. And that meeting took place at her house on Mass. Ave., in this city?

A. Yes, sir.

Q. At that time did you make any complaint or statement whatever concerning the manner of the disposition of this $8,000 by Mr. Woodward or anybody else?

A. I did not.

Q. Did you make any complaint whatever concerning the manner that the house was being constructed at that time or anything about it?

A. I do not know anything about it.

Q. That was in January, 1890, was it not?

A. I think it was.

Q. And the house was then in course of construction, was it not?

188 A. It was.

Q. Your contract with Myers bears date the 28th of October, 1889. Do you remember that?

A. Yes, sir.

Q. And he commenced work soon after upon the house, did he not?

A. I think he did.

Q. Well, then, you did not, did you, make any complaint or any statement whatever to Mrs. Taylor or to any one representing this $8,000 note up to the time the second installment of interest became due—namely, the 22nd of April, 1890—concerning the disbursement of the money or the matter of the construction of the house?

A. I do not remember that I did. I do not remember seeing any one excepting Mrs. Taylor.

Q. On the occasion you speak of?

A. Yes, sir.

Q. You have stated that out of this $8,000 the encumbrance then on the property, represented by the Porter note for the $1,600 and

the Bruff note of $1,250, were to be taken up. Who was to attend to that?

A. Mr. Rawlings attended to it.

Q. There was no one else to do it, was there?

A. I do not know.

Q. On your part?

A. I do not know. I supposed that the parties that made the loan usually attended to such things.

189 Q. You supposed that they would look out to see that it was done to protect themselves?

A. Yes, sir; as the money had never left their hands, I supposed that they would take care of it.

Q. I have asked you of the changes. What changes have taken place in the title to the property in controversy since this suit was commenced? You have mentioned certain things. Now, do you not also know that you have undertaken to convey this property to one William P. Black?

A. I do.

Q. What did he pay you for that property?

A. He paid me nothing.

Q. Was that an absolute deed?

A. I do not understand your question.

Q. Did you dispose of that property to William P. Black absolutely and unconditionally?

Mr. Elliot: I object to the question as not pertinent to anything involved in this suit. There is no reference in the bill of complaint to the conveyance to Mr. Black, and the question as to the modes or consideration for such conveyance are entirely immaterial.

A. I did not.

Q. What relation is William P. Black, the grantee in that deed, to you?

A. He is none to me. He is my husband's brother-in-law.

Q. Your present husband, Mr. McGreal?

190 A. Yes, sir.

Q. Where is that deed, do you know?

A. What do you mean?

Q. The original deed to Black.

Mr. Elliot: Same objection.

A. You mean who has the papers?

Q. Who has it?

A. I have it.

Q. It is home?

A. I think it is.

Q. Where was William P. Black when that deed was executed?

Mr. Elliot: Same objection.

A. In Chicago.

Q. Had you communicated with him before you signed it?

Mr. Elliot: Same objection.

A. I had; at least my husband had.
Q. With your authority and consent?
A. He did.
Q. He telegraphed to him, did he not?

Mr. ELLIOT: Same objection.

A. That I could not say. I do not remember.
Q. Do you remember, Mrs. McGreal, that he telegraphed to Black, and that Black also replied to him?

Mr. ELLIOT: Same objection.

A. It seems to me that there was a telegram, but I do not remember it.
Q. Do you not remember of seeing a telegram from William P. Black to your present husband concerning the matter of the execution of this deed that we are now speaking about?

191 Mr. ELLIOT: Same objection.

A. I think I do. There was a good deal of writing at that time and I do not remember just clearly.
Q. Have you any other correspondence between you and William P. Black concerning this conveyance?

Mr. ELLIOT: Same objection.

A. There was not.
Q. Did you ever see any letters from him to either yourself or your husband?

Mr. ELLIOT: Same objection.

A. I have.
Q. He wrote to your husband, did he not?
A. He did.
Q. Where are those letters?
A. I suppose my husband has them.
Q. Have you seen them recently?

Mr. ELLIOT: Same objection.

A. I have not.
Q. You say that William P. Black, the grantee in this deed, was in Chicago at the time that you executed it?

Mr. ELLIOT: Same objection.

A. Yes, sir.
Q. Your husband, Mr. McGreal, also signed the deed, did he not?
A. He did not.
Q. He did not?
A. He did not.
Q. Are you clear about that? Try and refresh your recollection.
192 A. To the best of my knowledge, I do not think so.

Mr. ELLIOT: Same objection.

Q. Where did you acknowledge that deed?
A. In this city.

Mr. ELLIOT: The deed is the best evidence, and I give the counsel notice that in all this line of examination in regard to the transaction between the witness and Mr. Black and in regard to this deed, its contents, etc., I will move the court at the hearing to assess the costs of the taking thereof against his client on the ground that it is immaterial and improper.

Q. What is your recollection, Mrs. McGreal—where were you when this deed was acknowledged?
A. In Washington.
Q. Where was the deed acknowledged by you?
A. I do not remember just the name of the place.
Q. Was it at your house or before a notary?
A. Before a notary.
Q. What did you do with it after you had acknowledged it; did you give it to your husband?

Mr. ELLIOT: Same objection.

A. I think my husband had it.
Q. You acknowledged it and he took it?
A. Yes, sir.
Q. It was recorded, was it not?
A. Yes, sir.
Q. And after it was recorded it was brought back to you?
A. At least my husband had it among my papers.
Q. And he has got it now?
A. I think he has.
193 Q. And has had it ever since, so far as you know?
A. I think so.

Q. Now, you say that this deed from you to Mr. Black was not absolute. Tell me what was the arrangement between you and him as to how he should hold this property when you made that deed, when you executed that deed.

Mr. ELLIOT: I object to that.

A. There was a trust given to me.
Q. He gave you back a declaration of trust, did he not?
A. He did.
Q. He executed that in Chicago——
A. He did.
Q. And sent it to you?
A. He did.
Q. You did not record that?
A. I did not.
Q. You have it now?
A. I think my husband has it.
Q. You saw it?
A. I have seen it.

Q. Well, tell us when you received that, Mrs. McGreal; was it before or after the deed was executed by you?
A. I do not remember.
Q. You received it by mail?
A. I think so; oh, yes, sir.
Q. Your husband showed it to you after he got it?
A. He did.
Q. Your mother was present during all this, I suppose?
194 A. I do not know that she was.
Q. Will you say that she was not?
A. She was not, I do not think.
Q. You think she was not?
A. She was in the house, maybe.
Q. She knew about it?
A. Yes, sir; she knew about it.
Q. You talked it over freely among yourselves?
A. No, sir; I do not know that I talked a great deal.
Q. You had no reason to keep it from your mother?
A. None at all. It was my business.
Q. Since your marriage to your present husband, Mr. McGreal, have you committed the custody and care of the papers relating to this property to him?
A. I do not know that I have.
Q. Well, in whose custody have they been?
A. It has been in my possession. I do not understand exactly what you mean. My husband naturally would take some interest in my business.
Q. Now, I wish to know who has had the actual custody of the papers relating to this property since your marriage with your present husband, Mr. McGreal?

Mr. ELLIOT: I object to that as immaterial.

Q. Do you mean as a lawyer?
A. No; I mean as between you and he.
A. It has been just between the two of us.
Q. You can get them if you chose, can you not?
A. I can.
195 Q. Freely and of your own volition?
A. I can.
Q. And if he wants to he can get them?
A. Yes, sir.
Q. Where do you keep them, at home?
A. At home.
Q. This deed and this declaration of trust you speak of between you and Mr. William P. Black are accessible now, are they not?
A. I think so.
Q. Where were they when you last saw them?
A. I do not remember.
Q. At what place?
A. At the house.
Q. In whose room; in your room?

A. Yes, sir.

Q. Have you any objection to producing them?

Mr. ELLIOT: I instruct the witness not to produce them except in pursuance of further instructions on my part.

A. I have not.

Q. You executed this deed to Black with the understanding that you were to be protected by him concerning the property, did you not, by this declaration of trust?

A. I suppose that was it.

Q. You did not intend to give him the property, did you?

A. I did not.

Q. Do you know or not in whose handwriting are the disaffirmance that you speak of and particularly the disaffirmance
196 of your contract as connected with this $8,000 note and the deed of trust?

A. My husband wrote them.

Q. You remember being served by the bailiff or the marshall with a writ of subpœna when this suit was commenced, do you not?

A. I do.

Q. You were present when he testified, I believe, were you not?

A. I was.

Q. Now, you acknowledged this disaffirmance so far as Mrs. Uttermehle's contract is concerned before a notary public, did you not?

A. I did.

Q. Now, was that before or after this bailiff called at your house?

A. It was before.

Q. It was before?

A. It was.

Q. Were you out of the house before that bailiff called there that day?

A. I was.

Q. Where were you?

A. Down the street.

Q. Where did you go?

A. I had been down the street with Mr. McGreal to a notary's office.

Q. Give the name of the notary's place.

197 A. I do not remember his name.

Q. Where was it?

A. On F street.

Q. Between what streets?

A. Between 10 and 11, I think it was.

Q. Where else did you go that morning?

A. I may have been in a store—one or two stores.

Q. Have you any recollection of being anywheres on that day than at this notary's office before the ba-liff served you with the process I have mentioned?

A. Well, what kind of a place do you mean?

Q. I mean do you remember of going at any other place than the notary's office?

A. I went in a couple of stores.

Q. Name them.

A. I think in the Boston store, maybe, and a shoe store on F street.

Q. You are clear of that?

A. Yes, sir.

Q. Now, did you not go out in the afternoon, after your husband came home that day?

A. I may have gone out in the evening; I do not remember the time.

Q. What was done with the paper after you acknowledged it before this notary?

A. It was recorded.

Q. How do you know that?

A. Because my husband attended to it.

198 Q. Did you and your husband part after the notary took your acknowledgment?

A. We did.

Q. Do you know where he went to?

A. He went to the recorder's office.

Q. Did he tell you that?

A. He did.

Q. When he came home?

A. He did.

Q. Did he tell you what time he went to the recorder's office?

A. He did not.

Q. You do not know of your own knowledge?

A. I do not.

A. *I do not.*

Q. What do you know about the sending of this notice of this paper purporting to be your disaffirmance to Mrs. Taylor, anything?

A. It was sent to Mrs. Taylor.

Q. Do you know anything about it?

A. I do not.

Q. It was after your husband came home?

A. It was not.

Q. It was before?

A. It was before.

Q. How do you know that?

A. Because my husband had attended to it.

Q. He attended to it?

A. He did.

199 Q. Do you know what hour of the day he did send it?

A. I do not.

Q. Do you know whether it was before or after you were served with process that I have spoken of?

A. I do not.

Q. After you were served with process, how long was it before you next saw your husband?

A. He came in some time in the afternoon; some time in the afternoon he came home.

Q. Can you give the hour?

A. I do not remember just the time.

Q. After you were served with process did you send him any message?

A. I did not.

Q. Did you go to him?

A. I did not.

Q. Can you say that you saw him before four o'clock that evening?

A. I think I did.

Q. What is it that enables you to state that?

A. It was some time in the afternoon, getting on to the evening. That is all I can remember.

Q. Was it after office hours?

A. About office hours, I believe.

Mr. EDWARDS: Notice is given to the witness, as well as her counsel, Mr. Elliot, to produce at the next session the deed from her to William P. Black and the declaration of trust from said Black to herself referred to in the testimony.

Adjourned until May 7, '91, one o'clock.

MASON N. RICHARDSON, *Examiner.*

200 WASHINGTON, D. C., *May 7th*, 1891—1 o'clock p. m.

Met pursuant to agreement of counsel at the law offices of Charles A. Elliot, Esq., "Fendall building," to take further testimony for and on behalf of the respondent McGreal.

Present: Mr. C. A. Elliot, for the respondent; Messrs. Edwards & Barnard, for complainants; the examiner, M. N. Richardson, and the witnesses; whereupon cross-examination of Mrs. MCGREAL was continued by Mr. EDWARDS:

Q. Mrs. McGreal, have you brought with you the deed from you to Mr. William P. Black and the declaration of trust from him to you, referred to in your testimony at the last session, and which you were requested to produce at this hearing?

Mr. ELLIOT: I instruct the witness not to produce either of the papers. The deed is not evidence in that shape, the record being the best evidence of it, of which Mr. Edwards can get a duly certified copy. As to the declaration of trust, that is a matter between Mr. William P. Black and the defendant, and there is no suggestion anywhere in the record in this case that the deed was not given for full consideration, and hence that question is not before the court, and I instruct the witness not to produce the papers until further along in the case, if I so advise.

201 Q. I only want to know if she has brought it.

A. I have not.

Q. You decline to produce that under the instruction of your counsel, do you not?

A. I do.

Q. And that is the only reason?

A. Well, yes, sir.

Q. What object had you in view when you executed this deed to William P. Black?

A. I did it to protect my property.

Q. In what respect?

A. In several respects; various respects.

Q. Please mention them.

A. One, that the property was safer out of my hands than in it.

Q. And the declaration of trust from Mr. Black back to you, that you speak of, was in aid of the same object, was it not?

A. Well, I do not understand what you mean.

Q. And the declaration of trust from Mr. Black back to you, that you speak of, was in aid of the same object?

A. It was to protect my rights.

Q. You executed, as I understand you, the deed to Mr. Black to protect yourself in your rights of the property, and you also took the declaration of trust back from Mr. Black so that you might be protected against him and his heirs, did you not?

A. I did.

Q. Had you any other object in view when you executed this deed to Black and took this declaration that you have mentioned?

A. I do not know of any.

Q. Up to the time of the execution of this deed had you
202 and Mr. William P. Black discussed the matter of this deed of trust to secure Mrs. Uttermehle in question in this case?

Mr. ELLIOT: The witness need not answer unless she desires to.

Q. Did you decline to answer?

A. I do not remember very well about that.

Mr. ELLIOT: I will suggest to the witness that she had better answer all the questions propounded by Mr. Edwards, inasmuch as there is nothing in the world to be concealed; but as a lawyer I will state to her that there are a good many questions put that she is under no legal obligation to respond to.

Q. Do you not know that Mr. William P. Black and you or your husband had communicated with one another before this deed was executed concerning the question of your liability and the liability of the property for this $8,000.00 loan in question?

A. My husband may have done so. I do not remember and I do not know.

Q. Do you say that you had no conversation whatever with Mr. William P. Black concerning this before the execution of the deed, and never heard any—that is, concerning this $8,000 loan and the question of your liability and the liability of your property therefor?

A. Well, I may say that I had none.

Q. Did you not hear him in conversation with your husband?

A. My husband may have gotten some letters from him. That is all, I think. I have never seen the gentleman.

Q. You have never seen him in your life, have you?

203 A. No, sir.

Q. Never had any acquaintance with him whatever?

A. None.

Q. You only knew of him through representations of your husband, Mr. McGreal?

A. That is all, and some friends.

Q. Who are those friends?

A. Mr. Black's brother, General Black, and other people that know them.

Q. Formerly Commissioner of Pensions?

A. He was.

Q. Your husband, I believe, is a clerk in the Pension Office, is he not?

A. He is.

Q. And has been ever since your marriage?

A. He has.

Q. Do you not know also, from the correspondence you saw between your husband, Mr. McGreal, and Mr. William P. Black, or otherwise, that the matter of your liability on the contract with Myers and on account of the mechanic liens that had been filed against the property were also discussed?

A. Yes, sir; I think so.

Q. And was not the execution of this deed and declaration of trust in aid of or for the purpose of further protection to you in your effort to evade and avoid these obligations?

A. It was.

204 Q. Now, you say, Mrs. McGreal, that in your efforts to prevent the sale of this lot under the Porter trust that the matter of your liability was discussed—that the matter of your minority was discussed, and that that was the ground upon which you based your claim to prevent that sale?

A. I believe that that was what Mr. Mattingly filed the bill for.

Q. You were advised, were you not, that it was questionable at least as to the liability of the property for this $1,600.00 Porter note on account of your minority when you signed it and signed the trust deed? You were advised that it was questionable or doubtful?

Mr. ELLIOT: The witness need not, and I so instruct her, answer any question as to what she was advised by any member of the profession, for it is absolutely notorious that such matters are private and confidential.

A. Well, the best I could understand it.

Q. You have no recollection at this time of any other objection being raised to defeat that sale than your minority, have you?

A. I do not know of any.

Q. You knew that you were a minor at the time you made the obligation to Mr. Rawlings for this $8,000 loan?

A. I knew that I was under the age of 21.

Q. You also knew that you were a minor, under the age of 21 years, when you executed the note and deed of trust to secure this $8,000 loan?

205 A. I did.

Q. Did you disclose that fact to either Mr. Rawlings or any of the parties to this suit?

A. I did not; I was not asked.

Q. Was that your only reason?

A. I did not think of it.

Q. Did you think it was necessary to disclose it?

A. I did not.

Q. For the reason that you intended to pay it at that time?

A. I did.

Q. And you executed that deed of trust and in perfect good faith?

A. I did.

Q. Your present husband, Mr. McGreal, knew your age, did he not, when he married you?

A. I do not know that he did.

Q. Did he know whether or not you were a minor at that time and under the age of 21 years?

A. I think he knew I was not 21 years. I do not think that he thought anything about it, though.

Q. Up to the time that the second installment of interest on this $8,000 loan came due, which was the 22nd of April, 1890, had the matter of your age or of your minority been discussed between you and your present husband, Mr. McGreal, to your recollection?

A. It had not.

Q. When was it first discussed prior to the institution of this suit?

A. After I had my attorney's advice.

206 Q. And then how did it come up?

A. I went to see him and asked him what protection I had. He said he did not see that I had any except my minority.

Q. And that, according to your recollection, is the first time that the question of your age was discussed either between you and your husband or by anybody else in his presence?

A. It was.

Q. Do you know who paid for the recording of the deed from you to Mr. William P. Black we have been speaking about?

A. Who paid for it?

Q. Yes.

A. I paid for it.

Q. There has been but one deed executed by you to Mr. William P. Black to this property?

A. But one deed.

Q. And that was recorded?

A. It was.

Redirect examination.

By Mr. ELLIOT:

Q. Who is Mr. William P. Black?
A. My husband's brother-in-law.
Q. He resides where?
A. Chicago.
Q. What — his profession?
A. Lawyer.
Q. By whose advice was that deed to Mr. Black executed?
A. My attorney's advice.
Q. That was myself, I believe?
207 A. It was.
Q. Mr. Edwards has put to you the question as to the motive in executing that deed and asked you whether or not you did not do that to avoid the payment of this obligation of $8,000. Was there or not any fraud contemplated or any improper thing contemplated in the execution of that deed from your husband and self to Mr. Black?
A. There was not.
Q. Can you remember upon what ground or for what reason I gave you the advice to execute that deed?
A. To protect my rights.
Q. Do you remember in what way?
A. To make my disaffirmance more binding.
Q. Do you remember my advising you that the disaffirmance ought possibly be made by an instrument of equal dignity with the deed of trust and thereupon it ought to be made by a deed as such?
A. That is what I understood.
Q. And I thereupon advised the execution of that deed. Now, independent of that, was there any motive in your mind or in the mind of anybody else to your knowledge in the execution of that deed to Mr. Black?
A. There was not.
Q. You have been asked as to whether or not you had any money at the time of the execution of this trust to Mrs. Uttermehle.
A. I may have had two or three hundred dollars for my own expenses.
208 Q. Did you, as a matter of fact, have any money at that time?
A. I had not any money except only a few hundred dollars to take care of myself.
Q. I observe in your testimony here on cross-examination that you first answered as you did now that you had two or three hundred dollars, and subsequently when Mr. Edwards asked you whether you had any other means or property you said no. Now, I ask you whether or not you intended to convey by that meaning that at the time of this transaction with Mrs. Uttermehle you had no money at all.
A. No, sir; I did not mean that.
Q. Mrs. McGreal, you were shown a contract here the other day

between the builder, Joseph W. Myers, and yourself. Where was that papers executed?

A. I signed the papers, I think, at the house.

Q. In whose presence?

A. In Mr. Myers' son's presence.

Q. In whose presence did he sign it?

A. I did not see it signed.

Q. Was it not signed at the same place?

A. It was not.

Q. When was it signed, if you remember?

A. I do not remember.

Q. Before or after it was brought to you?

A. Before.

Q. Who read the contract to you?

A. No one.

Q. You read it?

209 A. I did not read it.

Q. Any portion of it?

A. Nothing of it.

Q. What happened, then, on that occasion?

A. He simply asked me to sign that paper.

Q. And you simply signed it?

A. And I signed it.

Q. Independent, Mrs. McGreal, of this contract for building here and the execution of the deed of trust to secure Mrs. Uttermehle and the joinder with your husband, Mr. Moore, in the previous deed of trust, how many other transactions have you had of a business character?

A. Only one.

Q. How many deeds of trust have you ever given?

A. One.

Q. Which was that?

A. The one for $500.

Q. You have been question- as to when you first made up your mind to disaffirm this alleged contract with Mrs. Uttermehle. Can you fix about what time that was? And, if you can, do so; and, if you cannot, just give us the motive that operated in your mind leading to such disaffirmance.

A. It was some time in May, 1890; simply to protect my rights.

Q. How were your rights in any danger?

A. By liens that had been filed on the property.

Q. How did you know anything about liens?

A. Because I had been threatened with liens and liens had been filed against me.

210 Q. Do you know about the amount of those liens?

A. I did.

Q. Can you give us any and in a general way about how much they were?

A. Over $3,000; between $3,000 and $4,000.

Q. When did you move into the house?

A. Some time in June.

Q. How long after the house was said to have been finished did you move in it?

A. Two months.

Q. Upon whose suggestion did you move into it?

A. I moved into the house because my attorney advised me to take possession of the property at a very great expense that I was not able to do.

Q. At the time that you moved into the house, what was its condition as to being completed according to the terms of the contract or otherwise?

A. The house had not the gas put in from the street, and the doorways had not been fixed, and the ground porch was in an unfinished state, and the doors did not move right.

Q. That was in the month of June?

A. It was.

Q. Well, now, had you not any conversation with Mr. Myers regarding the prospect of any liens against the property?

A. Mr. Myers, the builder, you mean?

A. Mr. Myers or anybody else with regard to any prospect of any liens being filed against your property.

211 Ex. C. M. N. Richardson, Examiner.

In some States, according to law, it is important that within 48 hours after a contract is made for building it be put on file or record at the town clerk's office by the party of the second part for his proper and legal protection. Several cases might be quoted where proprietors have had to pay money twice over, to the amount of several hundred dollars, on account of omission to put on record the contract.

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Agreement for Building.

Articles of agreement, made and entered into this twenty-eighth day of October in the year one thousand, eight hundred and eighty-nine by and between Joseph W. Meyers of the city and county of Washington in the District of Columbia as the party of the first part, hereinafter called the contractor: and Mrs. Carlotta M. Moore, of the same place of —— and State of ——, county of ——, as the party of the second part, hereinafter called the proprietor:

Witnesseth, first. The said party of the first part does hereby, for himself his heirs, executors, administrators, or assigns, covenant, promise and agree to and with the said party of the second part, her heirs, executors, administrators or assigns, that he the said party of the first part, his heirs, executors, administrators or assigns, shall and will, for the consideration hereinafter mentioned, on or before the first day of April, in the year one thousand eight hundred and ninety well and sufficiently erect, finish and deliver in a true, per-

feet and thoroughly workmanlike manner, the three story
212 and basement brick dwelling-house [work required in the erection and completion of]* for the party of the second part, on ground situated on the west side of 19th street between Q and R streets N. W. house No. 1624 19th street, in the city [of]* and county of Washington in the [and State of]* District of Columbia, agreeably to the plans, drawings and specifications prepared for the said works by John G. Meyers, architect, to the satisfaction and under the direction and personal supervision of said John G. Meyers, architect, and will find and provide such good, proper and sufficient materials, of all kinds whatsoever, as shall be proper and sufficient for the completing and finishing all the different branches of work, and other works of said building mentioned in the drawings and the specifications, and signed by the said parties, within the time aforesaid for the sum of five thousand nine hundred and thirty ($5,930) dollars.

Second. The said party of the second part does hereby for herself, her heirs, executors, administrators or assigns, covenant promise and agree to and with the said party of the first part, his heirs, executors, administrators or assigns, that the said party of the second part her heirs, executors, administrators or assigns, will and shall, in consideration of the covenants and agreements being strictly executed, kept and performed by the said party of the first part, as specified, will well and truly pay, or cause to be paid, unto the party of the first part, or unto his heirs, executors, administrators or assigns, the sum of five thousand nine hundred and thirty ($5,930) dollars, lawful money of the United States of America, in manner following:

213 First payment of $800 eight hundred dollars (thereof) when the basement walls are built up level and first tier of floor joists are on and levelled up and bridged.

Second payment of $800 eight hundred dollars (thereof) when the first-story walls are built up level, and the second tier of floor joists are on and levelled up and bridged.

Third payment of $800 eight hundred dollars (thereof) when the second-story walls are build up *and* level, and third tier of floor joists are on and levelled up and bridged.

Fourth payment of $800 eight hundred dollars (thereof) when the brick-work is finished and the roof is on the house, and the waste water from roof connected with sewer.

Fifth payment of $600 six hundred dollars (thereof) when the plastering is finished.

Sixth payment of $600 six hundred dollars (thereof) when the wood-work is finished ready for painting and varnishing.

Seventh payment of $1,530 one thousand five hundred and thirty dollars to be paid when house is finished by a note payable ninety day- thereafter with six per cent. interest and properly endorsed satisfactory to contractor [when the building is all complete, and

[* Words enclosed in brackets erased in copy.]

after the expiration of — days,] * and when all the drawings and specifications have been returned to John G. Meyers, architect.

214 Provided, that in each case of the said payments, a certificate shall be obtained from and signed by said John G. Meyers architect, to the effect that the work is done in strict accordance with drawings and specifications, and that he considers the payment properly due; said certificate, however, in no way lessening the total and final responsibility of the contractor; neither shall it exempt the contractor from liability to replace work, if it be afterwards discovered to have been done ill, or not according to the drawings and specifications, either in execution or materials; [and, provided further, that in each case a certificate shall be obtained by the contractor, from the clerk of the office where liens are recorded, and signed and sealed by said clerk, that he has carefully examined the records and finds no liens or claims recorded against said works, or on account of the said contractor, neither shall there be any legal or lawful claims against the contractor, in any manner, from any source whatever, for work or materials furnished on said works].*

And it is hereby further agreed by and between the said parties:

First. That the specifications and drawings are intended to cooperate, so that any works exhibited in the drawings, and not mentioned in the specifications, or *vice versa*, are to be executed the same as if mentioned in the specifications and set forth in the drawings, to the true intent and meaning of the said drawings and specifications.

215 Second. The contractor, at his own proper cost and charges, is to provide all manner of labor, materials, apparatus, scaffolding, utensils and cartage, of every description, needful for the due performance of the several works; must produce, whenever required by superintendent or proprietor, all vouchers showing the quality of goods and materials used; and render all due and sufficient facilities to the architect, superintendent or clerk of works for the proper inspection of the works and materials, and which are to be under their control; and they may require the contractor to dismiss any workman or workmen who they may think incompetent or improper to be employed; the workmen and contractor being only admitted to the ground, for the purpose of the proper execution of the works, and have no tenancy. The contractor shall deliver up the works to the proprietor, in perfect repair, clean and in good condition, when complete. The contractor shall not sublet the works, or any part thereof, without consent in writing of the proprietor.

Third. Should the proprietor at any time during the progress of the said works, require any alterations of, deviations from, additions to, or omissions in the said contract, specifications or plans, he shall have the right and power, to make such change or changes, and the same shall in no way injuriously affect or make void the contract;

[* Words enclosed in brackets erased in copy.]

but the difference for work omitted, shall be deducted from the amount of the contract, by a fair and reasonable valuation;
216 and for additional work required in alterations, the amount based upon same prices at which contract is taken shall be agreed upon before commencing additions, as provided and hereinafter set forth in article No. 6; and such agreement shall state also the extension of time (if any) which is to be granted by reason thereof.

Fourth. Should the contractor at any time during the progress of said works, become bankrupt, refuse or neglect to supply a sufficiency of material or of workmen, or cause any unreasonable neglect or suspension of work, or fail or refuse to follow the drawings and specifications, or comply with any of the articles of agreement, the proprietor or his agent, shall have the right and power to enter upon and take possession of the premises, and may at once terminate the contract, whereupon all claim of the contractor, his executors, administrators or assigns, shall cease; and the proprietor may provide materials and workmen sufficient to complete the said works, after giving forty-eight hours' notice, in writing, directed and delivered to the contractor, or at his residence or place of business; and the expense of the notice and the completing of the various works will be deducted from the amount of contract, or any part of it due, or to become due, to the contractor; and in such case no scaffolding or fixed tackle of any kind, belonging to such contractor, shall be removed, so long as the same is wanted for the work. But if any balance on the amount of this contract remains after completion in respect of work done during the time of the defaulting contractor, the same shall belong to the persons legally representing him, but the proprietor shall not be liable or accountable to them in any way for the manner in which he may have gotten the work completed.

217 Fifth. Should any dispute arise respecting the true construction or meaning of the drawings or specifications, or as to what is extra work outside of contract, the same shall be decided by John G. Meyers, architect, and his decision shall be final and conclusive; or in the event of his death or unwillingness to act, then of some other known capable architect, or a fellow of the American Institute of Architects, to be appointed by the proprietor; but should any dispute arise respecting the true value of any materials or works omitted by the contractor, the same shall be valued by two competent persons, one employed by the proprietor, and the other by the contractor, and these two shall have power to name an umpire, whose decision shall be binding on all parties.

Sixth. No new work of any description done on the premises, or any work of any kind whatsoever, shall be considered as extra unless a separate estimate in writing for the same, before its commencement, shall have been submitted by the contractor to the superintendent and the proprietor, and their signatures obtained thereto, and the contractor shall demand payment for such work immediately it is done. In case of day's work, statement of the same must be delivered to the proprietor at latest during the week

following that in which the work may have been done, and only such day's work and extra work will be paid for, as such, as agreed on and authorized in writing.

Seventh. The proprietor will not, in any manner, be answerable or accountable for any loss or damage that shall or may happen to the said works, or any part or parts thereof respectively or for any of the materials or other things used and employed in finish-
218 ing and completing the said works; or for injury to any person or persons, either workmen or the public, or for damage to adjoining property from any cause which might have been prevented by the contractor or his workmen, or any one employed by him against all which injuries and damages to persons and property, the contractor having control over such work must properly guard against and must make good all damage from whatever cause, being strictly responsible for the same. Where there are different contractors employed on the works, each shall be responsible to the other for all damage to work, to persons or property, or for loss caused by neglect, by failure to finish work at proper time and preventing each portion of the works being finished by the several contractors at date named in this contract for completion, or from any other cause; and any contractor suffering damage shall call the attention of the proprietor or superintendent to the same, for action as laid down in article No. 4.

Eighth. The contractor will insure the building to cover his interest in the same from time to time, as required; and for any loss of the contractor by fire the owner will not, under any circumstances, be answerable or accountable; but the proprietor shall protect [himself]* herself by insurance to cover [his]* her interest when payments have been made to contractor.

Ninth. All work and materials, as delivered on the premises to form part of the works, are to be considered the property of the proprietor, and are not to be removed without [his]* her consent; but the contractor shall have the right to remove all surplus materials after his completing the works.

219 Tenth. Should the contractor fail to finish the work at or before the time agreed upon, he shall pay to or allow the proprietor, by way of liquidated damages, the sum of ten ($10) dollars *per diem*, for each and every day thereafter the said works remain incomplete or none delivered.

Eleventh. ——

In witness whereof, the said parties to these presents have hereunto set their hands and seals the day and year above written.

Part- of the first part, JOS. W. MEYERS. [SEAL.]
Part- of the second part, CARLOTTA M. MOORE. [SEAL.]

Signed and sealed in the presence of—
Witnesses:
JOHN G. MEYERS.

[*Words enclosed in brackets erased in copy.]

Bond.

Know all men by these presents, that Henry Kluge and James Nolan are jointly severally [am j]* held and firmly bound unto Mrs. Carlotta M. Moore in the sum of five thousand ($5,000) dollars, for which payment well and duly to be made, [I]* we bind [myself]* ourselves our heirs, executors, administrators or assigns.

220 W-ereas, Joseph W. Meyers has contracted with Mrs. Corlotta M. Moore to execute, construct and complete a three-story and basement dwelling-house for the sum of $5,930 by a contract dated October 1889, hereto annexed; and the condition of this obligation is, that if the said Joseph W. Meyers shall duly perform said contract, then this obligation is to be void, but if otherwise, the same shall be and remain in full force and virtue.

In witness whereof, [I]* we have hereunto set [my]* our hands and seals this twenty-eighth day of October 1889.

HENRY KLINGE.
JAMES NOLAN.

Witnesses:
B. FRANK MEYERS.
J. G. MEYERS.

(Endorsed:) Agreement of building between —— ——, of the first part, and —— ——, of the second part. Dated ——, 18—. Filed ——, 18—. —— ——, architect. Palliser, Palliser & Co., publishers fine architectural works, New York, U. S. A. Price, 5 cents each; 40 cents per dozen.

221 A. He threatened to file liens against me and said that he did not care—he would lose nothing by it.

Q. When was that, if you remember?

A. That was about some time in April.

Q. Had you any knowledge or information or reason to believe that other parties contemplated filing liens previous to the middle of April?

A. I had.

Q. You can just state the sources of your knowledge and what information you had on that subject.

A. Mr. Myers told a gentleman to file his liens against me in my own house.

Q. Who was the gentleman?

A. A representative of Mr. Wheatley.

Q. Lumber dealers?

A. Yes, sir.

Q. Who paid the first installment of interest upon Mrs. Uttermehle's loan?

A. I did.

Q. Out of what funds, if you will pardon me for asking?

[* Words enclosed in brackets erased in copy.]

A. Out of some money that I had that I borrowed.

Q. At the time of the second installment of interest matured were you able to pay it?

A. I was.

Q. Did the fact of the maturity of that installment of interest have anything to do in your mind with the disaffirmance of this contract?

222 A. I offered to pay the money to Mr. Woodward, but he refused to take it, and then my attorney advised me not to pay it after that.

Q. That was after you had concluded to disaffirm the contract?

A. It was.

Q. And that was after you had been threatened with these mechanic liens, can you remember?

A. It was.

Q. Did not the mechanic liens amount to something like three or four thousands of dollars?

A. The- did.

Q. Are you not positive that any liens were filed at that time or merely threatened?

A. There were liens filed in April.

Q. Now, what steps did you take, about the time of the maturity of that interest, with regard to notifying Mrs. Uttermehle or answering any letter on the subject? Did you send her any letter about it?

A. I notified Mrs. Taylor.

Mr. ELLIOT: Have you got that letter, Mr. Edwards?

Mr. EDWARDS: Yes, sir (producing letter).

Q. Did you ever see that paper before (showing witness a paper)?

A. I have.

Q. From whom did you receive that?

223 A. From Mrs. Taylor. I suppose it was from Mrs. Taylor.

Q. In what way did you receive it?

A. By mail.

EX. "E." Mason N. Richardson, Examiner.

WASHINGTON, D. C., *June 13th*, 1890.

Mrs. Rose M. Taylor, attorney for Mrs. Utermehle, Washington, D. C.

MADAM: In response to your recent communication calling attention to my non-payment of interest upon the note held by you as the representative of Mrs. Utermehle, I would say that I consider that I have not been well treated in the entire transaction, and, inasmuch as the property now owned by me is threatened with a suit to enforce mechanics' liens now already filed, I have taken legal advice upon the subject.

As I was a minor at the time of these transactions—the execution of the deed of trust, &c.—I am advised that the affirmance or disaffirmance of the contract rests in my *direction* when I become of age. I therefore will not pay the interest demanded and at the proper time will take such action as I may be advised to protect my rights.

Very respectfully, CARLOTTA M. MacGREAL,
Late MOORE.

224 Ex. "D." Mason N. Richardson, Examiner.

Office of Dr. L. M. Taylor, 1221 Mass. avenue N. W.

WASHINGTON, D. C., *May* 27, 1890.

Mrs. Carlotta W. McGreal:

The three mos.' interest of $120 on your promissory note for $8,000 was due and payable at this office on the 22 day of April, 1890. An early settlement is desired.

Very respectfully, SARAH UTERMEHLE,
By ROSE M. TAYLOR, *Att'y.*

225 Mr. ELLIOT: I offer that letter in evidence and the examiner will please mark it as Exhibit "D."

Q. After you received that letter did you receive an answer?
A. I did.
Q. Did you ever see this letter before (showing witness a letter dated June 13th)?

(The letter shown witness was produced by Mr. Edwards upon the request of Mr. Elliot.)

A. That is my signature to it.
Q. You caused that letter to be mailed to Mrs. Taylor?
A. I did.

Mr. ELLIOT: I offer that letter in evidence, and the examiner will please mark it as Exhibit "E."

Q. You have testified that previous to reaching a conclusion of the disaffirmance of this alleged contract certain mechanic liens had been filed. How do you know that they were filed?
A. Because the record showed it.
Q. Did you examine the record?
A. I did not.
Q. Did you cause it to be examined?
A. I did.
Q. Previous to the date of that letter to Mrs. Taylor, which is dated June 13th, 1890, had you caused the records to be examined and had mechanic liens been filed?
A. Yes; they had.

Q. How long before you wrote that letter to Mrs. Taylor
226 had you concluded to disaffirm the alleged contract?
A. It was some time in May.

Q. Well, can you fix it; are you positive it was in May?
A. It was.
Q. I show you a draft of a letter which seems to have been dictated May 30th, 1890. Have you ever seen that before?
A. I have.
Q. Who prepared that paper?
A. My attorney.
Q. Had you or not at that time concluded to disaffirm the contract?
A. I had.
Q. Had you concluded to disaffirm the contract previous to that time?
A. About that time.

Mr. EDWARDS: I offer that letter in evidence, and the examiner will please mark it Exhibit "F."

227 Ex. "F." Mason N. Richardson, Examiner.

WASHINGTON, D. C., *May 30th*, 1890.

MADAM: [DEAR SIR:]* In response to your letter of —, calling attention to the non-payment of interest upon the note held by you, I would say that I consider that I was not well treated in the entire transaction, and, inasmuch as the property now owned by me is [now filed]† threatened with a suit to enforce mechanics' lien [as claimed]* by them, I [have]* concluded to take advice upon the subject. As I was a minor at the time of these transactions, the execution of the deed of trust, etc., I am advised that the affirmance or disaffirmance of the contract rests in my discretion when I become of age. I therefore will not pay the interest demanded, and at the proper time will take [as I may be advised to protect my rights]† such action as will protect my rights.

Yours truly, —— ——.

Mr. EDWARDS: Objection is made to the competency of this alleged draft of May 30th, 1890, given in evidence.
Mr. ELLIOT: I will prove that letter further on.
Mr. EDWARDS: I waive any formal proof. The objection is only to its competency.

Q. When the suit was filed through Mr. Mattingly to restrain the sale, as is commonly called here under the Porter trust, what knowledge had you of the statements in the bill of complaint?
A. I had none.
228 Q. Who did have?
A. No one that I know of.
Q. You saw Mr. Mattingly, I presume?
A. I saw Mr. Mattingly.

[*Words enclosed in brackets erased in copy.]
[†Words enclosed in brackets interlined in pencil in copy.]

Q. With whom were you?
A. With my mother.
Q. You stated to him, I presume, all the facts?
A. I did.
Q. And left the matter with him?
A. I did.
Q. Beyond that, did you make any inquiry as to the contents of that bill of complaint; what was said there; what was the character of the suit and the ground of the suit?
A. I did not.
Q. In other words, you put the matter in his hands and he was to attend to it?
A. I did.
Q. In his own way?
A. Yes, sir.
Q. And you depended upon him very properly to do it satisfactorily?
A. I did, as he was my attorney.
Q. Mr. Edwards has questioned you about a bond being given for the completion of this house; do you know anything about that?
A. I do not.
Q. Do you know who the sureties on the bond were?
A. I believe there is a man by the name of Nolan.
229 Q. Do you know Henry Clinge?
A. I do not.
Q. And James Nolan?
A. I do not know him.
Q. Do you know anything about either of them and their financial responsibility?
A. I do not.
Q. Did you ever hear their names, independent of being sureties on this bond?
A. I have not.
Q. You were asked about what changes, since the institution of this suit, have taken place with regard to the title of that property. Do you understand what that means?
A. I do not understand it.
Q. It means, what conveyances of any kind or description, either by way of mortgage or deed or lease or matters of that kind, you have executed since the institution of this suit?
A. The deed to Mr. Black.
Q. And that is all?
A. Yes, sir.
Q. You have been asked as to who has had the custody of your papers, etc., since your marriage to Mr. McGreal—who has had control of those papers?
A. Myself.
Q. I presume that, like husband and wife, he would have access to them and that you would?
A. He did.

Q. In the matter of this disaffirmance, what advice did he
230 give you on the subject?

A. Only what advice that he had learned from his attorney.

Q. In other words, what I want to ascertain is whether or not this disaffirmance of your contract was made under the influence either of your mother or your husband.

A. It was not.

Q. With regard to the preparation of these papers relating to the disaffirmance of the contract and their service—the service of copies upon the various parties, Mrs. Uttermehle and the lienors—who attended to that for you?

A. My husband.

Recross-examination.

By Mr. EDWARDS:

Q. Do you mean to say that your present husband is not in sympathy with you in your effort to avoid the contract between you and Mrs. Uttermehle in question?

A. My husband believes in protecting my rights.

Q. Do you mean to say that your present husband is not in sympathy with you in your effort to avoid the contract between you and Mrs. Uttermehle in question?

A. He is.

Q. And he was in sympathy with you at the time you concluded to do it, was he not?

A. He was.

Q. And he has assisted you in every way that he could in aid of that object, has he not?

A. He has been of a great benefit to me.

231 Q. And he has assisted you in every way that he could in aid of that object, has he not?

A. He has.

Q. You have been interrogated by your counsel concerning your business transactions, and I understood you to say that you had but one outside of those referred to in his question. Do you remember of having a transaction with your former husband's brothers whereby you acquired the absolute title to this 5th-street property?

A. They gave me a quitclaim deed to the property.

Q. You understand what that was to do, did you not?

A. They released the property to me.

Q. You understood at the time what that deed was to do, did you not?

A. It gave me the property. I knew that.

Q. And you understood also what this deed of trust to secure $500 to Mr. Edmonston that we have been speaking about was intended to do, did you not?

A. I did.

Q. You do not undertake here in this matter to say that you were ignorant of what you were about?

A. Oh, no.

Q. You knew that you were borrowing money from Mrs. Uttermehle and you were going to build a house on that lot, and you intended to secure her in the money that she was to loan you, did you not? Is not that so?

A. I did.

Q. Now, you have spoken about the amount, the aggre-
232 gate amount, of the mechanic liens, and that it was between $3,000 and $4,000. Now, you know that that includes the $1,530 which Mr. Myers claims to be due him, to be the balance due him on his contract that we have been speaking about?

A. I think it is what he claims.

Q. But that sum, that $1,530, is included in this aggregate sum that you mentioned, is it not?

A. It is.

Q. Do I understand you correctly, Mrs. McGreal, to say that you offered to pay Mr. William R. Woodward interest which he refused to receive?

A. I do.

Q. When and in whose presence did that occur?

A. My husband offered it to Mr. Woodward.

Q. Do you know anything about that?

A. How do you mean know anything?

Q. Of your own knowledge; were you present?

A. I was not.

Q. Then did you know of your own knowledge anything about it?

A. Only what my husband said.

Q. That is all?

A. That was all.

Q. Did you give him the money to pay Mr. Woodward the interest?

A. I did.

Q. When was that?

A. When it fell due.

233 Q. In April?

A. In April.

Q. But did not you inform Mrs. Taylor by letter that the moneys to pay this April interest was in Mr. Woodward's hand?

A. I did.

Q. And do you not know that Mr. Woodward then informed you of the condition of the funds?

A. He did.

Q. And you so testified?

A. I thought he had money enough to pay Mrs. Taylor, and he notified me he had not, and I said my husband offered him the rest of it, so he refused that.

Q. That is what your husband told you?

A. It is.

Q. Did he tell you why Mr. Woodward refused to receive it?

A. Because he said he did not know how to act in the matter.

Q. How much did you give your husband to pay to Mr. Woodward at this time, in April, 1890?

A. I think it was about twenty-some dollars.

Q. Was not a question presented by Mr. Woodward as to the balance in his hands—whether he could properly apply it on the interest and whether it did not belong to the contractor? Do you not remember that question being raised?

A. He said something like that. I did not hear him say it, though.

Q. But it was also reported to you, was it not?

234 A. Yes, sir; it was reported to me.

Q. And this is the only way that you claim that you offered to pay Mr. Woodward the interest during April, 1890, is it not?

A. It is.

Q. Tell me whether prior to the 13th day of June, 1890, you had, by any notice or statement whatever, advised Mrs. Uttermehle, the complainant in this suit, or any one representing her that you intended to disaffirm and avoid your obligation to her involved in this case.

A. I did not.

Q. You say, Mrs. McGreal, that you had no knowledge of the statements contained in the bill filed by your mother in your behalf through Mr. Mattingly, your lawyer, to stop the sale of the Porter trust. Now, I ask you to reflect and tell me if you are not mistaken in that statement.

A. I am not.

Q. Did not Mr. Mattingly read that bill to you at the time that it was prepared and before it was filed?

A. He may have read it to me, but I was not supposed to understand such things, and I did not understand it.

Q. Did you sign it?

A. I think I did, to the best I can remember.

Q. Did you not make oath to that bill that you had heard it read?

A. Yes, sir.

Q. And knew the contents of, and that the facts therein stated of your personal knowledge were true, and that those stated
235 upon information and belief you believed to be true. Do you not remember of so testifying now?

A. To the best of my knowledge I had signed it.

Q. Do you not recollect of so stating under oath before that bill was filed?

A. I do.

Q. Then how do you reconsile (sic) that with the statement you now make that you knew nothing about it?

A. I did not understand it then.

Q. You did not?

A. I did not.

Q. What did you not understand about it then that you do now?

A. I did not understand business then at all.

Q. What did you then — understand about that case and its object that you do understand now?

A. I understand something about it now that I did not understand about it then.

Q. What then was it that you did not understand that you do understand now? What particular things?

A. What the bill was and what the bill contained. I can comprehend it now better than I did then.

Q. That bill purports to be sworn to on the 25th of May, 1889, and was filed, as it appears by the record, two days afterwards. This bill was filed on the 23rd of June, 1890, about one year afterwards. Do you undertake to say that your business knowledge has greatly varied during that period?

Mr. ELLIOT: I object to that. That is a mere matter of argument.

236 A. I do.

Q. You have had more experience since?

A. I hope so.

Q. You had more experience between those two dates, have you?

A. I have.

Q. What, if any, investigation have you made or caused to be made concerning the financial responsibility of Henry Cling and James Nolan, the sureties on the bond of Joseph W. Myers in the matter of his contract to construct and build the house referred to in this contract that we have been speaking about?

A. I have made none and caused none to be made.

Q. You know nothing about their financial responsibility, in fact?

A. I do not.

Redirect examination.

By Mr. ELLIOT:

Q. Mrs. McGreal, you have been questioned with regard to this suit brought by Mr. Mattingly, and I would gather from what you say that the meaning you intend to convey was that you knew the suit was brought to restrain that sale?

A. I did.

Q. Did you know the ground upon which Mr. Mattingly thought the sale could be restrained?

A. On account of my minority, he said.

Q. You have stated that you did not know the contents of the bill. You did know that the suit was based upon that ground, as I understand you.

237 A. I do not know; I only knew that there was a suit brought.

Q. Upon the ground of your minority?

A. I do not know that.

Q. And the details of what the bill contained, the precise statements contained in the bill, you do not now remember?

A. I do not.

Q. Will you look at this paper and say in whose handwriting it is who signed that paper?

A. I signed the paper.

Q. Do you know what became of that paper after you signed it, or a copy of that paper?

A. It was recorded.

Mr. ELLIOT: I offer that paper in evidence, and the examiner will please mark it as Exhibit "G." I offer in evidence those papers, subject to proof as to the time upon which copies, if served, were served upon the various parties named.

I also offer in evidence a statement of the records in the clerk's office with reference to the mechanics' liens, which the examiner will please mark as Exhibit "H."

I also offer in evidence the record of the suit brought to enforce them.

It is agreed that the same may be read in evidence as if formally proved, subject to the objection as to their competency and materiality.

It is also agreed that the record in the equity suit may be referred to as if certified copies had been offered in evidence.

CARLOTTA M. MACGREAL.

238 Ex. "G." Mason N. Richardson, Examiner.

WASHINGTON, *June* 23, 1890.

I hereby expressly disaffirm a certain contract alleged to have been entered into between one Joseph W. Myers and myself October 28, 1889, and I disclaim any and all liability thereunder, for the reason that at the time of the making of said alleged contract I was a minor, under the age of twenty-one years, and became of age June 20, 1890; of all of which take due notice.

Very respectfully, CARLOTTA M. MACGREAL,
Late MOORE.

I certify that I delivered exact copies of the above notice at the places of business of the following-named parties: Wheatley Bros., Mylor Roche, A. K. Watson, adm. est. Peter Taylor, dec'd; Joseph W. Myers, Barber & Ross, H. Markward, James Nolan.

JOHN STOUT.

June 23, 1890.

Subscribed and sworn to before me on this 23 day of June, 1890.

ANDREW K. BROWNE, [SEAL.]
Notary Public, D. C.

239 (Endorsed:) 94. Declaration Joseph W. Myers with Carlotta M. MacGreal. Office of the recorder of deeds, Wash-

ington, D. C. Received for record June 23d, 1890, at 3.40 p. m. Recorded in Liber No. 1503, folio 313 *et seq.*, one of the land records of the District of Columbia. Examined by B. K. Bruce, recorder. Disaffirmance of Myers contract to Wheatley Bros., Mylor Roche, P. Taylor estate, J. W. Myers, Barber & Ross, H. Markward, and J. Nolan. Andrew K. Browne, notary public, District of Columbia.

240 EXHIBIT "H." Mason N. Richardson, Ex.

DISTRICT OF COLUMBIA, }
City of Washington, }

This is to give notice that whereas I, on the 22nd day of October, 1889, purported to convey lot numbered 49 in G. N. Hopkin's subdivision of certain lots in square numbered 111, in the city of Washington, District of Columbia, as the same is recorded in Liber J. H. K., folio 373, in the surveyor's office of the said District, unto Leroy M. Taylor and William R. Woodward, in trust to secure my alleged promissory note for the sum of eight thousand dollars ($8,000.00) to one Sarah Utermehle, at three years from date, with interest at six per cent. per annum, which said deed of trust is duly recorded in Liber No. 1436, folio 129, of the land records of the District of Columbia, and now having reached the age of twenty-one years upon the 20th day of June, 1890, I do expressly (sic) disaffirm the said deed of trust and disclaim any liability personally on said note, and disclaim that the said deed of trust constitutes a legal lien upon my property.

I was born on the 20th day of June, 1869, and at the time of the execution of the said alleged deed of trust and the execution
241 of the alleged promissory note I was a minor, incapable of executing said trust or making said note, except subject to my right of affirmance or disaffirmance when I should become of age, and I expressly now disaffirm the entire transaction.

In testimony whereof I have hereunto set my hand and seal this 23d day of June, 1890.

CARLOTTA M. MACGREAL, [SEAL.]
Late MOORE.

Witness:
G. W. BALLOCH.

DISTRICT OF COLUMBIA, }
Washington City. }

I, G. W. Balloch, a notary public in and for the above-named District and city, do certify that Carlotta M. Macgreal, late Moore, personally known to me, appeared before me this day and acknowledged the above instrument to be her act and deed and signed the same in my presence.

G. W. BALLOCH,
Notary Public.

[SEAL.]

I certify that I delivered an exact copy of this paper, addressed Mrs. Sarah Utermehle, care of Mrs. Rose M. Taylor, attorney, 1221 Massachusetts Ave., Washington, D. C., June 23, '90.

JOHN P. STOUT.

Subscribed and sworn to before me on this 23d day of June, 1890.

ANDREW K. BROWNE,
Notary Public, D. C.

242 (Endorsed:) 95. Disclaimer. Carlotta M. MacGreal to Taylor & Woodward. Office of the recorder of deeds, Washington, D. C. Received for record June 23d, 1890, at 3.45 p. m. Recorded in Liber No. 1503, folio 314 *et seq.*, one of the land records of the District of Columbia. Examined by B. K. Bruce, recorder. Disaffirmance of Utermehle transaction. Disaffirmance to Utermehle at *als.*

243 CARLOTTA M. MACGREAL.

Subscribed and sworn to before me this 10 day of Nov., 1891.

MASON N. RICHARDSON,
Examiner in Chancery.

FRANCIS C. BURKE, a witness of lawful age, being by me first duly sworn according to law for and on behalf of the respondent, testifies as follows:

By Mr. ELLIOT:

Q. State your name.
A. Francis C. Burke.
Q. You, I believe, are the mother of Mrs. McGreal?
A. I am.
Q. State when she was born.
A. June 20th, 1869.
Q. Where was she born?
A. 734 5th street.
Q. Who were present at the time of her birth?
A. My mother and my sister.
Q. Was there any physician in attendance?
A. Dr. Wm. G. Palmer.
Q. Where was she baptised?
A. At the 4th Presbyterian church, Dr. Smith's church, 9th street between G and H.
Q. How long after her birth?
A. I think she was just two years old, exactly. She could not talk at all.
Q. Have you made any examination of the records of that church with regard to the record of her birth?
244 A. Dr. Smith always kept a record of all children that were baptised.
Q. Have you examined that record yourself recently to find out

as to whether or not it gave the age of the child and the time of the baptism?

A. It has been examined. It does not state the age.

Q. Did you examine it?

A. No, sir; I did not.

Q. What do you know, Mrs. Burke, about this transaction between your daughter and Mr. Rawlings, acting for Mrs. Uttermehle?

A. I do not know very much about it.

Q. You can state all you know.

A. I was with her when she asked for the loan.

Q. State what happened on that occasion.

A. She asked for the loan, stating that she intended to build this house, and I do not know anything more. I never saw Mr. Rawlings at my house. He was there several times, but I did not see him on business.

Q. Did you see him more than once at his office?

A. No, sir; I do not think that I ever saw him but the one time we were there or one time afterwards, but he was not there; possibly in New York.

Q. Do you recollect anything more being said on that occasion except her asking for the loan?

A. That is all. He said that he thought that he could get it for her.

Q. There have been one or two questions that have been propounded to your daughter on cross-examination in regard
245 to the disaffirmance of this deed of trust to secure Mrs. Uttermehle. I would ask you what you know on that subject.

A. Well, I do not know exactly what you mean.

Q. Do you know why she did it?

A. Yes, sir; I know it was on account of the liens and on advice of her lawyer.

Q. Do you know when she concluded to do it?

A. Well, I think probably it was in May. I think as well as I can remember it was some time in May.

Q. Do you know whether or not any person influenced her in that direction?

A. I am very certain nobody did. She acted on the advice of her attorney.

Q. You did not influence her?

A. I certainly did not.

Q. How about her husband?

A. I know he did not.

Cross-examination.

By Mr. EDWARDS:

Q. You remember, you say, Mrs. Burke, of going to Mr. Rawlings' office with your daughter for the purpose of securing a loan? You knew, did you, the amount that she decided to get?

A. Well, I did not. I think in the first place she asked for

$8,000; that was the amount; yes, sir; $8,000, that was the amount she asked for.

246 Q. You and she had discussed the matter of how much money it would take to build the house?

A. We really did not know.

Q. But you and she had discussed the matter about the building of the house before that, had you not?

A. Yes, sir; we thought we knew at least about what it would cost. We did not think it would cost that much.

Q. You and she, as mother and daughter, lived together and had also discussed the matter of the incumbrances that were on the property, this lot, at the time when she asked for this loan?

A. I knew the amount that was on it.

Q. You knew that at that time your daughter had been troubled about the possible loss of the lot through a sale under the Porter deed of trust, had you not?

A. I knew that they had advertised the property for sale; do you mean that?

Q. Yes; and that she had undertaken to stop it?

A. Well, really I do not understand that it had to be done through me.

Q. But still it was attempted; you know that?

A. To stop the sale?

Q. Yes.

A. Yes, sir.

Q. You are the lady who acted as her next friend in that suit?

A. That is the way Mr. Mattingly wrote it. I did not understand it.

247 Q. And you are the lady who made affidavit with your daughter, are you not?

A. Well, I do not remember.

Q. Your memory is not clear about making oath to it?

A. I do not think I did. I do not think it was required, only that she should. I do not remember of having done so at the time.

Q. Still, if you did so, you are the Fannie C. Burke who is mentioned in the affidavit?

A. Oh, yes, sir; if it is there, it must be so. It has escaped my memory.

Q. Of course, at the time that your daughter made this application you knew that it was necessary to secure the loan or it was expected to secure it on the lot and the building that was proposed to be built?

A. Yes, sir; that is what I supposed.

Q. That was intended, was it not?

A. Of course.

Q. And you knew also, in your conversations with her and the discussions between you—that is, that these prior incumbrances would be taken up out of the proceeds?

Mr. ELLIOT: I object. The witness has not said anything about any discussion between them.

Q. If it is not so, let her answer it so.

A. I did not have the management of the business at all in one way or the other and it was not talked to me about it. I never heard anything about how it was to be managed.

Mr. ELLIOT: I will suggest to the witness that she will pay
248 attention to the question because sometimes it is a little ambiguous.

A. It was not talked about, and I do not remember its being mentioned at all.

—. And you knew also in your conversations with her and the discussions between you that these prior incumbrances would be taken up out of the proceeds?

A. I supposed that these prior encumbrances would have to be taken up.

Q. Did your daughter communicate to Mr. Rawlings the condition of the lot; that it was vacant, and that she expected to build this house at the time that she applied for the loan?

A. Oh, yes, sir.

Q. And that she wanted to get the money to apply on the building as it was constructed, did she not?

A. Yes, sir; to construct a building with.

Q. Neither you nor she stated anything to Mr. Rawlings or to any one representing the party who was loaning the money concerning your daughter's minority, did you?

A. No, sir; the subject was never mentioned and never asked.

Q. Why did you not tell Mr. Rawlings that fact?

A. Well, because she asked for it in good faith, and she intended to do what was right.

Q. But you say that she concluded to disaffirm because of these liens?

A. Not until and on account of the liens, and her attorney stating to her that she had no other course to pursue at all, except to disaffirm her contracts.

249 Q. Will you say that you only went to Mr. Rawlings' office once with your daughter?

A. I was there twice, but Mr. Rawlings had—was not there at the time. He was in New York.

Q. And you say that you did not see Mr. Rawlings at all at your house at any time concerning the matter of this loan or anything incident to it?

A. No, sir; not at the house in regard to the loan or anything about it.

Q. Was there not a conversation between you and Mr. Rawlings in regard to the insurance?

A. Yes, sir; he called one morning and Mrs. McGrel (sic) was sick, and I went down, and he undertook to explain something about it, but I did not understand it.

Q. Do you remember also of going with your daughter to see Mr. William R. Woodward?

A. Yes, sir.

Q. How many times did you go there with her?

A. I was with her twice.

Q. Can you give the date you first called upon Mr. Woodward with your daughter about this matter?

A. It was while Mr. Rawlings was in New York we called to see if he had prepared the papers.

Q. It was in regard to negotiating and closing of the loan?

A. It was to see if he had made out the papers.

Q. And what did he say to you?

A. He said that he could not do anything until Mr. Rawlings got back.

250 Q. What was the next occasion that you went to him and what took place?

A. Only she went merely to ask for a statement which he promised and sent to her.

Q. That was after the April interest came due, was it not?

A. No, sir; I think it must have been before that.

Q. Are you clear about that?

A. It was some time in March, I think, probably.

Q. She wanted a statement from him of the disbursements of the money, I suppose?

A. Yes, sir.

Q. Will you be positive, Mrs. Burke, that you did in fact call *and* a second time on Mr. Woodward before the 22nd of April, 1890, after the interest came due?

A. I never took any account of the interest about the time that the interest became due.

Q. You do remember, do you not, a discussion about the money in Mr. Woodward's hands, the amount of the money and the interest?

A. Yes, sir; I remember of that.

Q. Will you state that prior to hearing of that and that there was not enough in his hands, according to his statement, to pay it, that you had seen Mr. Woodward more than once?

A. Yes, sir; I am sure it was before that that we asked for the statement.

251 Q. And that was the second visit, was it not, when she asked for the statement; that was the second visit to him, was it not?

A. Yes, sir.

Q. And she got a statement from Mr. Woodward?

A. No, sir; a month passed and she received none.

Q. But she did receive one?

A. Not until, I think, she had notified Mrs. Talor (sic) to go to Mr. Woodward to collect the interest; then he gave her a statement showing that he had not sufficient funds to pay it.

Q. And that provoked a discussion you have been speaking about concerning Mr. Rawlings calling on you about the insurance?

A. Yes, sir.

Q. It had taken more mone- (sic) to pay the insurance; therefor- it did not leave enough to pay the interest—sufficient in his hands?

A. It left only about $90.00.

Q. That was about the amount, $90?

A. I think that was about the amount.

Q. Did you or any one to your knowledge ever discuss the question of your daughter's minority or notify any of the parties interested in loaning this $8,000 before the execution and passing of the papers that your daughter was a minor and under 21 years of age?

A. It was never mentioned at all.

Q. Have you any knowledge that it ever was brought to the attention or notice of Mrs. Uttermehle, the holder of this $8,000 note, or any one acting for her or representing her prior to the 13th day of June, 1890, when your daughter wrote this letter that you have seen here today to Mrs. Taylor?

252 A. I never mentioned it to any one. I could not answer for any one but myself.

Q. You say that you cannot answer for any one but yourself. That means that you did not give any such notice or communication?

A. No, sir.

Q. But you might have knowledge through information obtained from others as to this matter of a notice of communication concerning your daughter's minority to Mrs. Uttermehle from other parties or through other sources. Can *can* (*sic*) you say that you had any other information or knowledge on the subject?

A. No, sir.

FANNIE C. BURKE recalled.

By Mr. ELLIOT:

Q. Where has your daughter been living since her birth?

A. Always on 5th street.

Q. With whom?

A. With my mother and father.

Q. During the period of her married life to Mr. Moore did you all keep house together?

A. Well, all lived together; she never left the house.

A. And never had left?

A. Never left it while Mr. Moore was living.

Q. Where was this contract in regard to building the house made, if you know; where was it signed?

A. It was signed in our house, but I was not present.

253 Q. Who was present?

A. Nobody but Mr. Frank Myers and Mrs. McGreal, then Moore.

Q. Who was present when the deed of trust and the note to Mrs. Uttermehle was signed and given to Mr. Rawlings; who else, if you know?

A. Mr. Rawlings and Mrs. McGreal, then Moore.

Q. You were not there?

A. No, sir.

Q. Who was present with Mrs. McGreal at Mr. Woodward's office when the transaction was finally closed, if you know?

A. It was not closed at that office at all. There was no transaction at Mr. Woodward's office.

Q. What do you mean by that?

A. I mean that we were never sent to close any transaction, and that I was never there only on the times I have stated, and it was then for the business that I have stated.

Cross-examination.

By Mr. EDWARDS:

Q. The matter of the closing of the transaction after the execution of the papers was left to Mr. Rawlings, was it not?

A. I thought that was the closing when the papers were signed. I supposed that was the closing of the transaction.

Q. You knew that the matter of the other trust had to be attened (*sic*) to and taken up and money paid and expenses and all that?

254 A. I know; but Mr. Rawlings was attending to that for the other party and not for us.

Q. That is your idea?

A. Of course it was. They loaned the money and he was using their money. We had nothing to do with that.

Q. Now, do you undertake to say that Mr. Rawlings, to your knowledge, was employed to represent in any way the loaner of this money? I am calling attention to your knowledge.

A. Well, he has acted in that capacity several times, I understood, for them.

Q. Did he make any declaration to you or in your presence that he was acting for and representing the loaner of this money? If so, where and in whose presence?

A. Well, I could not tell you where, but he said—I think that he said—that he had so much money that he had to invest for Dr. Taylor, and that is all I know. I could not tell you even where he had said it or just at what time he said that.

Q. Do you not know that your daughter agreed to pay Mr. Rawlings his commissions for negotiating that loan for her?

A. Yes, sir. She agreed to pay him what he asked, though she found out afterwards that it had been ex*h*orbitant.

Q. And do you not know that she paid it to him out of this money obtained from Mrs. Uttermehle on this loan?

A. She did not pay it to him. He paid himself.

Q. Do you not know that it was paid?

A. I suppose Mr. Woodward probably paid it, as he had the disposing of the money.

255 Q. And it was a correct demand and payment, so far as Mr. Woodward was concerned, was it not?

A. Well, probably that was his charges.

Q. And it was the agreement at the time that your daughter was to pay. It was in accordance with the agreement made at the time

with Mr. Rawlings. at the time that he negotiated or promised to secure this money on the strength of this security?

A. Yes, sir; that is what he charged. He said he could not get it any less. She could not get it for less than 3 per cent., and we told him that we thought we could get it at 2 per cent. It would not cost him more than 2 per cent., as that was the usual price for loans.

Q. And afterwards it was agreed, so far as your daughter and Mr. Rawlings were concerned, that he was to be paid 3 per cent.?

A. Yes, sir.

Q. You heard her testify to that effect, did you not, while she was on the stand?

A. Yes, sir; I think so.

FRANCES C. BURKE.

Subscribed and sworn to before me this 10 day of Nov., 1891.

MASON N. RICHARDSON,
Examiner in Chancery.

256 Ex. "I." Mason N. Richardson, Examiner.

JUNE 5, '90.

MRS. BURKE: After some difficulty found the birth recorded as you stated. The paper is prepared & I am prepared to testify to it. Bring a notary with you.

Respectfully, WM. G. PALMER.

MAY 30TH, 1890.

Miss Mary Burke was born June 20th, 1869, at 734 5th St. N. W., Washington city, D. C.

WM. G. PALMER, M. D.,
929 *H St. N. W.*

WASHINGTON, *June* 5, 1890.

I, Wm. G. Palmer, on oath do say that I was the physician in attendance on Mrs. Francis C. Burke June 20, 1869, on which date she gave birth to a female child, afterwards named Carlotta Mary Burke, and which said child is now the wife of W. P. MacGreal.

WM. G. PALMER, M. D.

Witness:
HELEN P. PALMER.

Acknowledged and sworn to before me this 7th day of June, 1890.

[SEAL.] SARAH S. SAMPSON,
Notary Public.

Term expires Nov. 23d, 1891.

(Endorsed:) Record as M. Lotta's birth.

257 Mr. EDWARDS: I will admit that if produced Dr. Palmer would testify to the facts set out in this affidavit, and that this affidavit have the same effect as his deposition, Exhibit I.

MASON N. RICHARDSON,
Examiner in Chancery.

258 No. 15023.

SCHEDULE "A" REFERRED TO IN THE AFOREGOING CERTIFICATE.

No. 1.

Henry C. Porter *et ux.*, Mary A., to Rob't E. Moore & Carlotta M. Moore, joint tenants.	Deed, dated Sept. 3, 1887; recorded Sept. 28, 1887. Liber 1277, fol. 409.

Caption.—With perpetual right to use the walls of the two houses lying immediately north and south of said lot for building purposes, without cost, as granted in deed from Wm. Brough *et ux.* to Henry C. Porter, March 8, 1886, Liber 1172, fol. 41, said wall on the north being forty (40) feet, more or less, high and fifty (50) feet, more or less, long, and said wall on the south being forty-six (46) feet, more or less, high and fifty-four (54) feet, more or less, long.

The Real Estate Title Insurance Co. of the District of Columbia.

No. 2.

Rob't E. Moore *et ux.*, Carlotta M., to Charles Early & Joseph T. Dyer.	Trust, dated Sept. 3, 1887; recorded Sept. 28, 1887. Liber 1277, fol. 411.

No. 3.

Caption.—Released Oct. 23, 1889; recorded Nov. 1, 1889, in Liber 1441, fol. 100, to Carlotta M. Moore, reciting trust from Carlotta E. Moore *et al.*

259 NOTE.—Records of office of register of wills show death of Robert E. Moore, April 20, 1888. See Administration 14, folio 3073.

No. 4.

Carlotta M. Moore to Wm. R. Woodward & Leroy M. Taylor.	Trust, dated Oct. 22, 1889; recorded Oct. 22, 1889. Liber 1436, fol. 129.

Caption.—To secure Sarah Utermehle, eight thousand dollars ($8,000), 3 years, 6 % quarterly. Grantor acknowledges as widow.

No. 5.

Seymour Cunningham & John S. Blair to Carlotta M. Moore.	Release, dated Oct. 22, 1889; recorded Nov. 1, 1889. Liber 1441, fol. 101

Caption.—Release from trust made by Henry C. Pater March 8, 1889, in Liber 1163, fol. 485.

Cunningham signs Cummingham.

No. 6.

The Real Estate Title Insurance Co. of the District of Columbia.

1890, June 23.—Record of disaffirmance by Car-otta M. MacGreal, late Moore, of a certain contract alleged to have been made between Joseph W. Myers and herself October 28, 1889, disclaiming any and all liabilities thereunder for reason of infancy, she having become of age June 20, 1890. Dated June 23, 1890, Liber 1503, fol. 313.

Not sealed and defectively acknowledged.

Appended is certificate of John P. Stout that he delivered
260 exact copies of above at the place of business of Wheatley Bros., Taylor Reche, A. K. Walton, administrator estate Peter Taylor, deceased; Joseph W. Myers, Barber and Ross, H Markward, and James Nolan.

No. 7.

Charlotte M. MacGreal, late Moore. Declaration, dated June 23, 1890; recorded June 23, 1890. Liber 1503, fol. 314.

Recites trust of Oct. 22, 1889, to Leroy M. Taylor and Wm. R. Woodward to secure eight thousand dollars ($8,000) to Sarah Utermehle, 3 years, 6 %, in Liber 1436, fol. 129, and declares that now, having reached the age of 21 years on June 20, 1890, disaffirms said trust and disclaims all liability personally on said note, and that said trust constitutes a legal lien on her property; that she was born June 20, 1869, and at time of execution of said trust and note was a minor incapable of executing said trust and note, except subject to her right of affirmance or disaffirmance on becoming of age, and now disaffirms the entire transaction.

Appended is certificate of John P. Stout that he delivered an exact copy of above addressed to Mrs. Sarah Utermehle, care of Mrs. Rose M. Taylor, attorney, No. 1221 Mass. Ave., Washington, D. C., June 23, 1890.

The Real Estate Title Insurance Co. of the District of Columbia.

261 The Real Estate Title Insurance Co. of the District of Columbia.

No. 8.

SARAH UTERMEHLE *vs.* CARLOTTA M. MCGREAL, WM. PIERRE MCGREAL, Her Husband; Wm. R. Woodward, Leroy M. Taylor.	Equity.	No. 12568.

1890, June 23.—Bill for sale of caption to enforce trust, in Liber 1436, fol. 129. Pending.

Above from docket entries. Papers not in clerk's office.

No. 9.

Carlotta M. McGreal, wife of Wilburn P., formerly Carlotta M. Moore, to Wm. P. Black.	Deed, dated June 27, 1890; recorded July 14, 1890. Liber 1500, fol. 472.	

Caption.—Grantor hereby disaffirming the deed of trust purporting to convey said premises to L. M. Taylor and Wm. R. Woodwood in trust to secure Sarah Utermehle eight thousand dollars ($8,000), 3 years, from Oct. 22, 1889, 6%, in Liber 1430, fol. 129, said trust having been executed and delivered when the grantor hereto was a minor, she being 21 years of age on June 20, 1890. Grantor acknowledges privily; husband does not join.

262 No. 10.

WHEATLEY BROTHERS *vs.* CARLOTTA MCGREAL, Formerly CARLOTTA MOORE.	No. 2251.	Lien.

1890, April 28.—$667.71 and interest *vs.* house No. 1612 19th St. N. W. Lot 49, square 111.

The Real Estate Title Insurance Co. of the District of Columbia.

No. 11.

MYLON ROCHE *vs.* CARLOTTA M. MCGREAL, Formerly MOORE.	No. 2253.	Lien.

1890, April 28.—$276.00 and interest *vs.* caption as in Liber J. H. R., fol. 373.

No. 12.

ALLEN K. WALTON, Administrator of Peter Taylor,
vs.
CARLOTTA M. MCGREAL, Formerly MOORE. } No. 2262. Lien.

1890, May 9.—$400.00 and interest *vs.* sublot 49, square 111.

No. 13.

JOSEPH W. MEYERS
vs.
CARLOTTA M. MOORE, now CARLOTTA M. MCGREAL. } No. 2269. Lien.

1890, May 21.—$1,530.00 and interest *vs.* caption.

263 No. 14.

BARBER AND ROSS
vs.
CARLOTTA M. MOORE, now CARLOTTA M. MCGREAL. } No. 2270. Lien.

1890, May 21.—$91.92 and interest *vs.* caption.

No. 15.

HOWARD MARKWARD
vs.
CARLOTTA M. MOORE, now CARLOTTA M. MCGREAL. } No. 2271. Lien.

1890, May 21.—$231.00 and interest *vs.* caption.

The Real Estate Title Insurance Co. of the District of Columbia.

No. 16.

JAMES NOLAN
vs.
CARLOTTA M. MCGREAL, Formerly MOORE. } No. 2277. Lien.

1890, June 12.—$143.00 and interest *vs.* caption.

No. 17.

HENRY KLINGE
vs.
CARLOTTA M. MCGREAL, Formerly MOORE. } No. 2281. Lien.

1890, June 20.—$90.00 and interest *vs.* caption.

264 The Real Estate Title Insurance Co. of the District of Columbia.

No. 18.

CHARLES WHEATLEY, SAMUEL E. WHEATLEY, and William Wheatley, Trading as Wheatley Brothers; James Nolan; Howard Markward, Phineas M. Barber, Samuel Ross, Trading as Barber and Ross; Henry Klinge, by Petition, *vs.* CARLOTTA M. MCGREAL, JOSEPH W. MYERS, Wm. R. Woodward, Leroy M. Taylor, Sarah Utermehle, William P. Black.	Equity. No. 12766.

1890, Oct 22.—Bill for sale of caption to enforce liens 2251, 2277, 2271, 2270, and 2281. Pending.

The Real Estate Title Insurance Co. of the District of Columbia.

(Endorsed:) Abstract.

265 WASHINGTON, D. C., *October 8th*, 1891—2 o'clock p. m.

Met, pursuant to agreement of counsel, at the law offices of Charles A. Elliot, Esq., solicitor for respondents, to take further testimony for and on behalf of respondents.

Present: Charles A. Elliot, Esq., for the respondents; Messrs. Edwards & Barnard, for complainants; the examiner, Mr. Richardson, and witnesses; whereupon—

JOHN P. STOUT, a witness of lawful age, being by me first duly sworn according to law for and on behalf of the respondents, testified as follows:

By Mr. ELLIOT:

Q. State your name and residence.

A. John P. Stout. My place of business is 1333 F street N. W.

Q. You are acquainted, I believe, with the defendant William P. McGreal?

A. I am.

Q. Did you in the month of June, 1890, have any business with him?

A. Yes, sir.

Q. What was it, sir?

A. Serving some papers on different business men in the city.

Q. I show you this paper and ask you if that is your signature (showing witness Exhibit M. N. R., "G").

A. It is; yes, sir.

Q. You recognize that paper?

—. Yes, sir; I do.

Q. Were any copies made of that paper?

A. Yes, sir; there were.

266 Q. What was done with them?

A. They were distributed around and served by me.

Q. Upon whom were they served?

A. Well, I think I can give the names just as they appear here, but not served in the order named there: Wheatley Brothers, Mr. Roche; A. H. Watson, administrator of Peter Taylor, deceased; James W. Myers, Barbour & Ross, H. Markwood, James Nolan.

Q. I will show you Exhibit M. N. R., "H," and ask you if you ever saw that paper before.

A. Yes, sir.

Q. Was there a copy made of that paper?

A. Yes, sir; there were a number of copies made of it; various copies made of it.

Q. Upon whom were the copies of that paper served?

A. Mrs. Sarah Uttermehle, care Mrs. Rose Taylor.

Q. When did you receive these two papers—the one you have in your hand and the one I previously showed you?

A. I received them on the same day I made the affidavit here to having served these, June 23rd, 1896.

Q. About what hour of the day did you receive them?

A. Well, it was along about *the* 10 or 11 o'clock in the morning Mr. McGreal and I met, and we started out and walked out together.

Q. Well, what did you do then?

A. We first went up to Mr. Nolans', as I remembered it, and served the first one on Mr. Nolans, and then I think it was served on the architect, Myers; that we went from there and then down and served on Barber & Ross, and then I think we next went to Markwood's, on G street between 6th and 7th streets, carpenter and builder, and then from there we got on the cable car and

267 went out to Mr. Wheatley's, and from there we went over to the daughter of Mr. Peter Taylor, on R. I. Ave. between 7th and 8th, and from there up to Mrs. Rose M. Taylor's, I think, on Massachusetts avenue.

Q. How long did it take you to serve all of those papers?

A. I do not think it would take—we did not stop; we pressed right on that route, and the only delay was in serving the last one on Mr. Roche. Mr. McGreal went with me, and we started out together. On serving the one on Massachusetts avenue on Mrs. Rose M. Taylor we separated. I do not think it would take over an hour and a half. I do not suppose it would to serve them all. I do not think it would. It may have taken a little longer than that. I know that the last one was served just before I met Mr. McGreal in the afternoon.

Q. What time did you meet him in the afternoon?

A. Thre- o'clock; met him by appointment.

Q. On whom did you last serve?

A. On Mr. Roche.

Q. What length of time elapsed between the service upon the person just preceeding Mr. Roche and upon Mr. Roche?

A. There must have been considerable time. We took lunch up at a place on K street, sir, near Mount Vernon place—up in there—and then we separated to meet at that later hour. I think it must have been in the neighborhood of 3 o'clock. It was before three, anyhow. It was after half past two that the last was served.

Q. Can you fix the hour that you took lunch?

A. Not distinctly. The only way I could fix that would be allowing an hour and a half to reach that place, and it was probably between 12 and 1, I think.

Q. To make it clear, as I understand you, you and Mr. McGreal served all these papers except the one on Mr. Roche?

A. Yes, sir; then we separated before the last one was served.

268 Cross-examination.

By Mr. EDWARDS:

Q. How long have you known Mr. McGreal?

A. Well, I have known him for probably four or five years; I think three or four years.

Q. What was your occupation at the time of this transaction and service of these papers?

A. Well, I was a life-insurance man at that time.

Q. Did you know his wife?

A. No, sir; I never met her until quite recently.

Q. You did not know her when you served these papers?

A. No, sir; I think I had seen her, but was never introduced—never spoke to her.

Q. When did Mr. McGreal first speak to you about doing this service?

A. Well, he had spoken to me—I do not know positively, but I think he had spoken some few days before that.

Q. Where?

A. There at my office or meeting me on the street, I think.

Q. What did he say to you?

A. Well, that he wanted me to serve some papers; give me a chance to make some little fees.

Q. Were you in the habit of doing that work?

A. No, sir; that is the first and only instance of the kind I have ever had.

Q. Did he make any appointment with you as to the time that he wanted you to do it?

A. No, sir; I do not remember that he did.

Q. How long before you actually received the papers had you seen Mr. McGreal?

A. You mean the day?

269 Q. How long was it before you received these papers was it that you had first seen Mr. McGreal about this business?

A. We proceeded as soon after that—went into the hotel and read them over and made a comparison.

Q. Then had you in point of fact been approached by Mr. Mc-

Greal concerning the service of these papers before the very day that you did serve them?

A. Yes, sir; I think there was something said about it some few days or a week or some such matter before that.

Q. What did he say?

A. I do not know that I can recollect that, only that he would like me to make the service.

Q. Did he state the character of the service?

A. Yes, sir; but I do not remember it now.

Q. You do not remember what he said to you?

A. No, sir.

Q. He did not show you any paper at that time?

A. No, sir; he did not.

Q. Did he show you any papers prior to the day that you actually served them and received them?

A. No, sir; he did not.

Q. Had you made any appointment for this day that you served them?

A. We had not.

Q. He came to your office with them?

A. No, sir; he met me on the street.

Q. Where?

A. In front of the Equitable Life Insurance Society, on F street.

Q. Between what streets?

A. Between 13th and 14th streets.

Q. And you had had no previous appointment? It was an accidental meeting?

270 A. Yes, sir—that is, as I remember it now, I will not positively assert that; but I was in conversation with a gentleman by the name of Criss, and I remember that instance, and I introduced Mr. McGreal to Mr. Criss, and we then separated. I think it was a purely accidental meeting.

Q. What was Mr. Christ'- full name and what does he do?

A. He is a life-insurance man and he is also connected with these carettes.

Q. Give his first name.

A. No, sir; I cannot; but you can very easily ascertain that at the Equitable Life Insurance Society.

Q. When Mr. McGreal met you he said what?

A. He had a little business with me and if I would excuse myself and ask Mr. Criss to excuse me, or something like that, and we separated.

Q. And then he handed you these two papers that are purported to be signed by his wife?

A. He pulled out quite a number of papers there in the Ebbitt house, and among them were these papers.

Q. You went into the Ebbitt, did you?

A. Yes, sir; we went into the Ebbitt house.

Q. Did he say that he would go along with you?

A. Yes, sir; and he did go. I think I went to some little protesting; did not know where the parties were and did not know

about the manner of serving them, and he said he would go with me.

Q. You say that your recollection is that you first met him on this day that you served them between 10 and 11 o'cloc-?

A. About that hour, I think; yes, sir.

271 Q. Will you say that it was before eleven o'clock positively?

A. Well, to the best of my recollection I think it was probably about half past ten.

Q. What occurred or transpired or what is there that enables you or what facts or circumstances are there that enables you to state positively the hour that you first met Mr. McGreal on the 23rd of June, 1890?

A. Well, there are a number of things, I think. I have an indistinct recollection of the meeting and of the hour that we took lunch and of the hour we separated and the time we met again that fixes that thing in my mind.

Q. Now, you say you first went to Mr. Nolan's?

A. Yes, sir; from the Ebbitt.

Q. And where was he when you served them on *then*?

A. I think he was not in. I think that was served on one of his employees there and a gentleman who is the book-keeper there in his establishment. I do not know what his name was.

Q. Where was the place of business that you left this notice?

A. On 14th street about a square or a square and a half from the Ebbitt.

Q. You walked up there?

A. Yes, sir.

Q. From there you went——

A. Over to Mr. Myers', near the corner of 15th and Pa. Ave.

Q. You walked there?

A. Yes, sir.

Q. And next?

A. We took the cars from there to Barber and Ross', down on Pa. Ave.

Q. And then?

A. From there we walked up there to Markwood's, I think; let me see; that is right; yes, sir; we went to Markwood's from there.

272 Q. That is between——

A. That is on G street between 6th and 7th.

Q. And you walked up there from Barber and Ross'?

A. Yes, sir; that is my recollection.

Q. And from Markwood's, where?

A. We took the cable car out to Wheatley's place, on 7th street.

Q. Between what streets?

A. I think that is between P and Q or the intersection of R. I. Ave. and 7th.

Q. And then?

A. We went from there over to see the widow of Peter Taylor, on R. I. avenue, I think, or a street that strikes into R. I. avenue right

near 7th, right near or opposite the stone yard. I remember that quite distinctly.

Q. And you did not see her?

A. No, sir; I think that was left there with some lady in the house for her.

Q. You went over there from Wheatley's?

A. Yes, sir; it is just across the street.

Q. From Mrs. Taylor's you went where?

A. We walked out R. I. avenue until, I think, we struck Massachusetts avenue or some intersecting street that led along to Massachusetts Ave. and then to Mrs. Rose Taylor's.

Q. Did you see her in person?

A. I am not sure; we left that paper with a lady there at the door. There was some one there at the door. I will not say positively.

Q. Do you know Mrs. Rose M. Taylor?

A. I do not.

Q. And you cannot say that the person you left it with was Rose M. Taylor?

A. No, sir; I cannot say that.

Q. Where did you next go?

A. Next place we went down to lunch.

273 Q. Where?

A. Well, it is that restaurant and lunch place or saloon on K street, right opposite the park there, between 7th and 8th—Dismer's.

Q. You walked from there down to Dismer's and took lunch?

A. Yes, sir.

Q. I suppose Mr. McGreal treated you?

A. Yes, sir; he treated me to lunch; that is right, sir.

Q. Now, will you state positively the hour that you got there?

A. Well, I cannot swear to the exact hour that we got there, but I presume it was between, probably, half past 12——

Q. I do not want your probabilities, Mr. Stout, if you made any memorandum——

A. I did not.

Q. You did not make any memorandum?

A. No, sir.

Q. You made no memorandum of the hour you served these papers on any one?

A. No, sir; I did not.

Q. Will you state positively that you got to Dismer's before one o'clock of that day, sir?

A. I am quite sure we did, because our route was unbroken and continuous up to that time.

Q. It seems so, and that covered some territory?

A. Yes, sir; we covered considerable territory.

Q. Now, will you state positively that you were at Mrs. Taylor's house on Massachusetts avenue before one p. m. of that day?

A. I think we were, sir.

Q. Have you no memorandum?

A. No, sir.

Q. Then I understand after lunch you went——

A. We separated.

Q. And what was the understanding at the time that you separated?

A. We were to meet at the city hall here.

Q. At what hour?

A. Three.

274 Q. For what purpose?

A. Well, I was, it was understood, to serve in the mean time that notice on Roche just before meeting him. I was going to attend to some business down at the office and met Mr. McGreal here at three.

Q. And after you met him you went and made oath to these services?

A. Yes, sir.

Q. And that all occurred after three o'clock?

A. No, sir; I made oath, I think I made oath, before I met Mr. McGreal, as I was strolling up after serving it on Mr. Roche down here on La. Ave. or Ind. Ave. here. I just went in, and I have a kind of indistinct recollection of seeing him across the stree- when I went in. I do not remember the name of the notary I acknowledge- it before. I then met him on the outside.

Q. Tell me the hour in the day that you made oath before the notary, Brown.

A. Well, that must have been nearly three o'clock.

Q. Did you go direct from Brown's office over to the recorder of deeds' office with Mr. McGreal?

A. I went over and met him, and I think we went in soon after; yes, sir.

Q. Did you not in point of fact go direct from Notary Brown's office to the recorder of deeds' office with these papers for the purpose of putting them on record?

A. Yes, sir; I think we did soon after. I am not sure I met Mr. McGreal after I served Roche or whether it was immediately after I made the acknowledgment and then went over there; it was a few minutes after I served that last paper and acknowledged them that the paper was taken over to the recorder's office.

Q. You went along?

A. Yes, sir; I went over with Mr. McGreal.

275 Q. To the recorder's office and saw him leave them there for record?

A. I went with him. I do not think I paid any attention to what he was doing or his turning them over to any particular person.

Q. That was the object of your going?

A. Yes, sir; I went with him.

Q. To have them recorded?

A. Yes, sir.

Q. You do not know Mrs. Taylor nor where she lived at this time*d*, did you?

A. No, sir.

Q. Mr. McGreal gave you the information about her residence?
A. Yes, sir.
Q. And pointed it out to you?
A. Yes, sir.
Q. Now, when you got to the door and met this person, what did you say?
A. Inquired if that was the residence of Mrs. Rose M. Taylor.
Q. You found that it was?
A. Yes, sir.
Q. And then what did you say?
A. Well, I think probably I inquired if she was in, or if she was not in I left the papers with the person at the door to be turned over to her.
Q. Well, have you any recollection that you asked if she was in?
A. I am quite sure I did inquire, as I did at every place where they were to be served, and if I did not find them in I left them.
Q. And your recollection is that Mrs. Taylor was not in?
A. I am in doubt as to that. I will not swear positive-y (sic).

JOHN P. STOUT.

Subscribed and sworn to before me this 10th day of October, 1891.

MASON N. RICHARDSON,
Examiner in Chancery.

276 CHARLES A. ELLIOT, a witness of lawful age, being by me first duly sworn according to law, deposes and says:

WITNESS: In this case I simply desire to state that the deed from Mrs. McGreal and husband to William P. Black was drawn on advice of counsel and to make the disaffirmance an instrument of equal dignity with the deed of trust.

CHARLES A. ELLIOT.

Signed for the witness by consent of counsel.

Subscribed and sworn to before me this — day of October, 1891.

MASON N. RICHARDSON,
[Notary Public.]*
Examiner.

Mr. ELLIOT: That closes my case.

MASON N. RICHARDSON,
[Notary Public.]*
Examiner.

277 DISTRICT OF COLUMBIA, *To wit:*

I, Mason N. Richardson, an examiner in chancery, do hereby certify that the aforegoing depositions of Carlotta MacGreal, Mary E. Moore, Francis C. Burke, John P. Stout, and Charles A. Elliot

[* Words enclosed in brackets erased in copy.]

were by me duly taken down from the oral statements of the said witnesses in short-hand at the times and places within stated; that thereafter the said depositions were by me reduced to typewritten print from my stenographic notes of the same and were thereafter read over by the said witnesses and were then and there by them in my presence subscribed and sworn to, excepting the depositions of Charles A. Elliot, which was signed by me for the said witness by consent of counsel.

That said *depositions* were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters and things in issue in said cause.

That I am not of counsel for any of the parties to this cause and am not interested, directly or indirectly, in the issue thereof; that my fee is $80.00, which has been paid by the defendant MacGreal.

MASON N. RICHARDSON,
Examiner in Chancery.

Fee, $80.00, paid.
Exhibits, 10.
Witnesses, 5.

MASON N. RICHARDSON,
Examiner in Chancery.

278 In the Supreme Court of the District of Columbia.

UTERMEHLE
vs.
MACGREAL *et al.* } No. 12568. Equity.

Testimony in Rebuttal.

WASHINGTON, D. C., *April* 6, 1892—1 p. m.

Met pursuant to notice at the law office of Messrs. Edwards & Barnard, No. 500 5th street northwest.

Present: Messrs. Edwards & Barnard, solicitors for the complainants; Mr. Leon Tobriner, for the witness Henry Klinga, and the witnesses and examiner; whereupon—

HENRY KLINGE, a witness on behalf of the complainants, being first duly sworn, testified as follows:

By Mr. EDWARDS:

Q. Where do you reside, and what is your business or occupation?

A. I live at No. 257 N St. northwest, and by occupation I am a bricklayer and contractor.

Q. How long have you lived in this city and been engaged in this business?

A. I have lived in this city for the past twenty-six years, and have been in the business as a bricklayer since 1871.

279 Q. I call your attention to a paper purporting to be a bond dated October 28, 1889, alleged to be signed by Henry Klinge and James Nolan. Are you the Henry Klinge named in that paper? (Paper shown witness.)

A. Yes, sir.

Q. You identify the paper which I show you? It is attached to the depositions of the defendant in this suit.

A. Yes, sir.

Q. Are you acquainted with the property referred to in the contract to which this bond is attached, on 19th street between Q and R streets, in this city?

A. Yes, sir.

Q. State whether or not you are worth in property located in this District in the sum of at least the penalty of this bond, to wit, $5,000.00, free of all charges and incumbrances.

A. Yes, sir; I am.

HENRY KLINGE.

Subscribed and sworn to before me this 6th day of April, 1892.

OSCAR NAUCK, *Examiner.*

CHARLES C. DUNCANSON, a witness on behalf of the complainant, being first duly sworn, testified as follows:

My name is Charles C. Duncanson. I have lived in this city continuously all my life, and I am now and for the past twenty five years and upwards have been engaged in business as an auc-
280 tioneer, selling both real and personal property in this District. I have made sales both at auction and by private contract of real estate in all portions of this city and have had an extensive experience in such matters and I am acquainted with the values of real estate in all sections of the city. I know the property involved in this suit, viz., sublot 49, in square 111, being house numbered 1612 19th street, now occupied by the defendants MacGreal.

By Mr. EDWARDS:

Q. State whether or not you examined this property for the purpose of fixing its value; and, if so, give the dates and times you made the examination.

A. I made two examinations of this property, the first on May 29, 1891, and the last on last Monday.

Q. On the first occasion did you go inside of the house?

A. On the first occasion I did not go inside the house.

Q. Did you on the last visit?

A. On the last visit I examined it from bottom to top.

Q. What was the extent of your examination?

A. I made a pretty thorough examination.

Q. What, in your judgment, is the present value of that property?

A. I think it is worth at least $12,000.00.

Q. Did you meet Mr. MacGreal in the house on the last visit, or a gentleman who was introduced to you as such?

A. I was introduced to a gentleman there purporting to be Mr. MacGreal, who showed us through the house.

CHAS. C. DUNCANSON.

281 Subscribed and sworn to before me this 6th day of April, 1892.

OSCAR NAUCK, *Examiner.*

WALTER B. WILLIAMS, a witness on behalf of the complainant, being first duly sworn, testified as follows:

My name is Walter B. Williams. I have lived in this city for the past forty years, and during the last twenty-five years and upwards have been engaged in the business in this city as a real-estate auctioneer, selling both real and personal property. I have made sales of real estate all over this city and have had a large experience in dealing with real estate and its values and am well acquainted with the value of real estate in different sections of the city.

By Mr. EDWARDS:

Q. State whether or not you recently examined the property involved in this suit, known as sublot 49, in square 111, occupied by the defendants, for the purpose of fixing its value; and, if so, on how many occasions.

A. Yes, sir; on two occasions.

Q. When did you make the first one?

A. On or about the 29th of May, 1891.

Q. Were you also requested to make a further examination so as to view the interior?

A. Yes, sir.

Q. Did you do so?

A. Yes, sir; I did.

282 Q. When?

A. On last Monday.

Q. State whether or not you went inside to make that examination; and, if so, the extent of your examination.

A. I went inside and made a thorough examination of the premises.

Q. Who was with you?

A. Mr. Duncanson.

Q. Were you introduced to a gentleman as being Mr. MacGreal?

A. Yes, sir.

Q. He showed you through the house?

A. Yes, sir.

Q. You made these examinations for the purpose of fixing its value, did you?

A. Yes, sir.

Q. What, in your judgment, is the fair value of that property at this time?

A. From $11,500 to $12,000.

Q. You remember being called on some time since for the purpose of making this further examination? And state whether or not the examination was delayed on account of illness in your family.

A. Yes, sir; it was.

Q. You remember my calling on you for that purpose?
A. Yes, sir.
Q. And there was considerable delay occasioned by that fact, was there not?
A. Yes, sir; there was.

WALTER B. WILLIAMS.

283 Subscribed and sworn to before me this 6th day of April, 1892.

OSCAR NAUCK, *Examiner.*

Adjourned to meet at the same place this evening, at 3 o'clock.

OSCAR NAUCK, *Examiner.*

WASHINGTON, D. C., *April* 6, 1892—3 p. m.

Met pursuant to the last-noted adjournment.
Present: Messrs. Edwards & Barnard, for the complainant; Mr. John Ridout for the witness James Nolan; the witness, and the examiner; whereupon—

JAMES NOLAN, a witness produced by and on behalf of the complainant, being first duly sworn, testified as follows:

My name is James Nolan. I reside and have resided in this city for the past twenty-five years, and during that period have been engaged in the plumbing business and am now carrying it on.

By Mr. EDWARDS:

Q. I call your attention to a paper attached to the defendants' deposition, purporting to be a bond or undertaking, and wish you to state whether you are the James Nolan named in that paper.
A. Yes; but I claim that I am not liable on that paper.

284 Mr. EDWARDS: That portion of the answer as to the witness's claim of liability is objected to by complainant's solicitors because not responsive to the question.

Q. State whether or not you have property located within the District of Columbia of the value of $5,000.00 over and above all your debts and liabilities.
A. Yes, sir.

JAMES NOLAN.

Subscribed and sworn to before me this 6th day of April, 1892.

OSCAR NAUCK, *Examiner.*

285 In the Supreme Court of the District of Columbia.

UTERMEHLE *vs.* MACGREAL *et al.* } No. 12568. Equity.

I, Oscar Nauck, an examiner in chancery in and for the city of Washington, District of Columbia, do hereby certify that the fore-

going depositions were taken down by me from the oral statements of the said witnesses at the time and place mentioned in the caption thereof; that the said witnesses were by me first duly sworn and cautioned to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause; that the said depositions were thereupon read over by the said witnesses, and by them subscribed in my presence and in the presence of the respective counsel.

I further certify that I am not of counsel or in anywise interested in the result of this suit.

OSCAR NAUCK, *Examiner.*

286 (Endorsed:) No. 12568. Equity. Utermehle *vs.* MacGreal *et al.* (4.) Depositions on behalf of compl't. In rebuttal. No exhibits filed herewith. Oscar Nauck, examiner. Fee, $5.00, paid. Filed and published June 20, 1892; Apr. 28, 1892. J. R. Young, clerk. M. A. Clancy.

287 *Minute Entry.*

Court of Appeals of the District of Columbia.

OCTOBER 9, 1893.

SARAH UTERMEHLE, Appellant,
vs.
CARLOTTA M. MACGREAL *et al.* } No. 96.

Argument commenced by Mr. J. S. Edwards for appellant.

OCTOBER 10, 1893.

SARAH UTERMEHLE, Appellant,
vs.
CARLOTTA M. MACGREAL *et al.* } No. 96.

Argument continued by Mr. J. S. Edwards for appellant, and Mr. C. A. Elliot for appellees, and concluded by Mr. W. F. Mattingly for appellant.

288 Court of Appeals of the District of Columbia, November Term, 1893.

SARAH UTERMEHLE, Appellant,
vs.
CARLOTTA M. MACGREAL *et al.* } No. 96. (Equity, 12568.)

Transferred from the supreme court of the District of Columbia, pursuant to act of Congress of February 9th, 1893.

This cause came on to be heard on the record from the supreme court of the District of Columbia and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, reversed, with costs, and that

this cause be, and the same is hereby, remanded to the said supreme court with direction to pass a decree of foreclosure in conformity with the opinion of this court.

Per MR. JUSTICE SHEPARD.

November 7th, 1893.

[Endorsed:] Court of Appeals of the District of Columbia. No. 96. November term, 1893. Decree. Filed November 7, 1893.

289 Court of Appeals of the District of Columbia.

SARAH UTERMEHLE
v.
CARLOTTA M. MCGREAL *et al.*

Mr. Justice Shepard delivered the opinion of the court:

This is an appeal from the decree of the supreme court of the District, in special term, dismissing appellant's bill to foreclose a deed of trust upon a certain lot in the city of Washington.

It appears from the evidence that the lot was purchased September 3, 1887, by Robert E. Moore and his wife, Carlotta M. Moore (now Carlotta M. McGreal, the principal defendant), of H. C. Porter, who conveyed it to them as joint tenants. The purchase price was $4,250, of which Moore paid $1,400 in cash, giving the joint note of himself and wife for $1,600 secured by deed of trust on the premises, and assuming a purchase-money note due by Porter for $1,250, which was secured also by a prior trust deed executed by Porter. Moore died in April, 1888, whereupon his wife became the owner of the property in fee-simple, subject to the two deeds of trust aforesaid. Upon her failure to pay the debt due Porter, the lot was advertised for sale, under the trust deed, in May, 1889.

Mrs. Moore, through her mother as next friend, filed a bill to enjoin this sale, on the ground that she was a minor when she signed the deed of trust, and procured a restraining order which was afterwards discharged.

Mrs. Moore had been anxious to erect a house upon the lot, which was vacant, and then owned a party-wall interest in the buildings adjoining on each side. To accomplish this purpose, as well as to prevent the sacrifice of the lot at forced sale under the purchase-money liens aforesaid, she applied to the appellant, Sarah

290 Utermehle, for a loan of $8,000. She represented the title as perfect, subject to the said liens and some unpaid taxes which were to be paid off, together with the necessary expenses, out of the loan, and the remainder thereof was to go to the construction of the house. Mrs. Utermehle agreed to lend the money, and on October 11, 1889, gave a check therefor to W. R. Woodward, who, as her attorney, was to examine the title and prepare the necessary papers. It was agreed by all parties that the money was to remain in Woodward's hands for disbursement, and he was first to take up the purchase-money notes aforesaid, and pay the necessary expenses of making the loan, including the commission to Mrs. Moore's

broker, and then to pay out the remainder in accordance with the contract made by Mrs. Moore with one Myers, for the erection of the house.

On October 22, 1889, Mrs. Moore executed her note to Mrs. Utermehle for $8,000, payable three years after date, with interest at six per cent. per annum, payable quarterly, with a stipulation that default in the payment of any installment as it became due should mature the principal. A deed of trust was also executed by Mrs. Moore to Woodward and Taylor, trustees, in the ordinary form, with power of sale in case of default, etc.

Woodward disbursed the money in strict accordance with the agreement, making his last payment March 31, 1890, at which time $93.01 were left in his hands. On February 17, 1890, Mrs. Moore married her codefendant, W. P. McGreal, and as soon as the house was finished, about April 1, 1890, they moved into it and have since made it their home.

It appears that Mrs. McGreal was a minor when she signed the note and trust deed, having been born June 20, 1869. Neither Mrs. Utermehle nor her agents had any knowledge of this disability when the loan was made, nor until about June 13, 1890.

Mrs. Moore's mother lived with her before and during the negotiations for the loan and the erection of the house, and was fully informed of, and gave her approval to, everything that was done. No questions were ever asked with respect to Mrs. Moore's age, and no misrepresentations thereof were made. There was nothing to suggest the inquiry. Mrs. Moore was a grown woman, and had been a widow for a year and a half. It is true that she had alleged her minority in the bill filed in May, 1889, to restrain the sale of the lot under the deed of trust to secure the purchase-money notes to Porter, but Mrs. Utermehle's attorney never saw these papers, and only knew that a bill was pending to restrain the sale, which having failed of its purpose, was to be, and before the loan was completed was, dismissed. The mother, when questioned as a witness, said that they did not mention Mrs. Moore's minority "because she asked for the loan in good faith and intended to do what was right." It was not pretended that any undue advantage was taken of Mrs. Moore in making the loan. The loan was decidedly to her advantage; it prevented the sale of the lot and enabled her to build a house upon it, the enjoyment of which she still possesses. The lot cost originally $4,250, and its value with the improvements on it at the time of the trial was proved to be at least $12,000.

Mrs. Moore paid the first instalment of interest that fell due, and made no sign of an intention to repudiate the contract until more than two months after she had moved into the house. The first notice was contained in a letter to Mrs. Utermehle's agent, June 13, 1890, and this was followed up June 20, 1890—the day of arrival at majority—by a formal repudiation of the note and deed of trust, which was recorded and a copy served upon appellant and the trustees.

Upon hearing, the court below refused any relief whatsoever and dismissed the bill. From this decree complainant appealed to the

general term, from whence it has been regularly transferred to this court.

1. The first point to be disposed of is the contention of the appellees, that without reference to the merits, the decree dismissing the bill should be affirmed, because the complainant having the power, through the trustees, to sell under the deed of trust, is not entitled to foreclosure by judicial process without at least alleging some infirmity in the trust deed, or the refusal or inability of the trustees to act thereunder. The point is not well taken. The special powers contracted for in such instruments do not take away the jurisdiction of the courts of equity; they are merely additional thereto, to be exercised at the option of the mortgagee. The mortgagor has no right to complain if the mortgagee declines to exercise his summary remedy and resorts to the slower process of the court instead.

Even if this were not the rule, the bill shows on its face the utter insufficiency of the contract remedy, and the necessity of appeal to the powers of the court.

If it be granted that the power of sale in an infant's mortgage is voidable only, and not absolutely void at law, yet, after a formal and complete renunciation of the contract, as in this case, a
291 sale by virtue thereof would be of no practical value, for the infant, if bound at all, is not bound at law by the contract, but in equity by the peculiar facts of the case.

2. In so far as the right of the complainant to a foreclosure for the full amount, with interest, of the purchase-money notes taken up by her and the taxes paid by her on the lot is concerned, there can be no doubt. These were valid liens upon the premises, the binding effect of which could in no way be avoided. And besides, the occupation and claim of the premises upon coming of age would, if necessary, be held a sufficient ratification of the original purchase. Langdon *v.* Clayson, 75 Mich., 204.

By the payment of these notes and their delivery to her, Mrs. Utermehle became subrogated to all the rights and equities of the original vendors of the lot in controversy.

3. The questions, whether infants' contracts are void, or only voidable, the manner of their disaffirmance or ratification, and the extent to which they may be held liable at law, for fraud and deceit, have been much discussed since the famous decision of Lord Mansfield in Zouch *v.* Parsons, 3 Burr., 1794, and many subtle refinements and distinctions have been indulged in. And the extent to which equity will relieve against the hardship of the rule at law with respect to the disaffirmance of contracts made by infants is involved in a maze of contradictions by the varying opinions and shades of opinion of learned commentators and jurists. The harsh rule of the common law has been modified by the courts in many instances, and the general tendency of equity seems to have been towards the milder—and to our mind more reasonable—rule of the civil law, by extending the liabilities and obligations of infants.

Some of the States have wisely legislated to this end, while in England the infants' relief act of 37 Victoria has at least settled some of the leading points of controversy; but in this jurisdiction

we are left to the common law and the principles of equity as the foundation of decision.

The chief attribute of the common law has ever been its flexibility, its power of expansion and adaptation to the changing needs and circumstances of a complex civilization, advancing under the influences of learning, discovery and invention. While sudden and radical changes in its rules should only be wrought by legislative power and not by the courts, yet these should not adhere to the applications of the principles made in other days under circumstances and surroundings which may have completely changed, bearing the reason of the old rule with them.

The condition of the infant who has arrived at years of discretion in this age is different to what it was comparatively a few years ago. Grant that the necessity for his protection against the designing is as great as or even greater than it ever was; yet it must be admitted that his opportunities are far greater for the perpetration of frauds upon the unsuspecting who deal with him.

Rules of equity and good conscience which may be made to operate to arrest his fraudulent conduct and bind him to restitution and reparation in plain cases calling therefor, may also be made to afford him ample protection from the artifices of others, as well as from the effects of a reckless improvidence, reasonably to be apprehended of him, by those who may deal with him.

The defendant in this case did not declare herself in words to the complainant to be of full age, but the case is in our opinion none the weaker and probably the stronger for that in its appeal to equity. Had her appearance or the circumstances of the transaction been such as to call for a statement to that effect, it would have put complainant upon inquiry which might not reasonably have stopped with such a declaration merely. But here was a woman grown, and a widow after several years of marriage. She had attended to her own business before, without question from her mother and natural guardian, who lived with her. There was nothing to excite suspicion or provoke inquiry as to her age. The fact that she had a few months before alleged her infancy in an attempt to defeat a just debt, which was unknown to complainant, when coupled with her attempt to defeat this claim, would seem to justify the charge that her failure to make known her disability was the result of deep design, thus giving it all the force and effect, without any of the resultant weakness, of a deliberate misrepresentation.

The right of an infant to avoid a contract made upon such fraudulent representation has been denied in some well-considered cases. Kilgore *v.* Jordan, 17 Tex., 341; Fitts *v.* Hall, 9 N. H., 441. Some very learned and distinguished text-writers have expressed like opinions.

"Also, it seems, that if an infant above the age of discretion be guilty of any fraud in affirming himself to be of full age, or if by combination with his guardian he make any contract or agreement with the intent afterwards to elude it by privilege of infancy, a court of equity will decree it good against him, according to the circumstances of the fraud." Bingham on Infancy, 113.

292 "If an infant have been guilty of positive fraud, and thereby imposed upon the other party to his injury, he cannot set up his infancy as a defense to an action for the consideration, although the matter be in contract; for by his fraud he has put himself without the pale of his privilege, and is responsible to the same extent as if he were an adult." 1 Story on Cont., sec. 66.

"Neither infants nor *femes covert* are privileged to practice deceptions or cheats upon other innocent persons." 1 Story Eq. Jur., sec. 385.

The court of appeals of Maryland has also said that there might be such a case of gross fraud as to estop an infant. Mon. Building Association, 33 Md., 134.

It may be admitted, however, that the majority of cases hold that an infant cannot be estopped by a fraudulent representation that is the basis of a contract between him and another. Very many, however, which maintain this doctrine assert the right of estoppel against him where, by his conduct, he has led others to act to their prejudice in dealing with persons other than himself. See Bigelow on Estoppel (4th ed.) 584, *et seq.*

Ferguson *v.* Bobo, 54 Miss., 121, is a case of this kind. The infant conveyed the land to her father to enable him to obtain a loan, which he mortgaged it to secure. She had every appearance of being of full age, but made no statement that she was. The lender had no knowledge of her nonage or of any fact that put him upon inquiry. She was held estopped to set up her infancy in avoidance, though the court admitted, in deference to authority, that had the mortgage been made by her to the complainant, she would not have been. The distinction is, to say the least of it, shadowy and extremely difficult of apprehension. If an infant, standing by and making false statements, or remaining silent when it was his duty to speak, permit another to contract, as his own, with property which belongs to the infant, or against which he has a claim, can be thereby estopped to afterwards question its effect, then it would seem that he might as reasonably be estopped to avoid a contract entered into with himself, on the strength of an actual representation or tacit assertion of a similar falsehood.

In Sims *v.* Ernhard, 102 U. S., 300, which is claimed by appellee to be conclusive of this case, the complainant, who was both a married woman and an infant, conveyed the land with her husband, and shortly after divorce from him, which occurred many years afterward, disaffirmed the deed and demanded possession, which was refused. She thereupon brought suit, "to set aside the deed, and for an account of the rents and profits, as well as of the amount she is in duty bound to pay on account of the purchase-money," and a mortgage on the land which had been paid off by her grantee. It appears that when the deed was made doubts were entertained whether she was then of an age, and to remove them she signed a written statement, endorsed on the deed, that she was then of age. There was no other element of fraud in the whole transaction. The court says, in the opinion: "The circumstances under which the deed was made are to be considered. There is evidence that she

was constrained by her husband to execute the deed; that his conduct towards her was abusive, violent and threatening, in order to induce her to consent to the sale; that she was intimidated by him; that a look from him would make her do almost anything; and that she was in a weak and nervous condition." The question discussed at length in the opinion was the effect of lapse of time as evidence of confirmation. The court did say, however, with respect to the written denial of infancy: "An estoppel *in pais* is not applicable to infants, and a fraudulent representation of capacity cannot be an equivalent for actual capacity."

But the mere fact that it was thought necessary to obtain a written affirmation of ability to contract was enough to put the grantee upon notice of the necessity for further proof in that instance, where the grantor was a married woman and under the influence of a brutal and despotic husband. The case is stronger because she was laboring under the double disability of infancy and of coverture.

In consideration, however, of what was said in Sims *vs.* Ernhard, we will pass the question and turn to the consideration of another of a similar general nature arising out of the same facts, which has been urged as sufficient foundation for all the relief asked by the complainant.

4. Without reference, then, to whether the defendant should be estopped by the circumstances surrounding the transaction to deny the effect of her contract, will equity permit her to hold all the fruits of this loan, to live in and enjoy the comfortable home built therewith, and yet refuse to make return? We think not: "Infancy is not permitted to protect fraudulent acts, and therefore, if an infant takes an estate and agrees to pay rent, he cannot protect himself from the rent by pretense of infancy after enjoying the estate, when of age.

"If an infant pays money on his contract, and enjoys the benefit of it, and then avoids it when he comes of age, he cannot recover back the consideration paid. On the other hand, if he avoids
293 an executed contract when he comes of age on the ground of infancy, he must return the consideration which he had received. The privilege of infancy is to be used as a shield and not as a sword. He cannot have a benefit of contract on the one side without returning the equivalent on the other. But there are many hard cases in which the infant cannot be held bound by his contract though made in fraud, for infants would lose all protection if they were to be bound by their contracts made by improper artifices, in the heedlessness of youth, before they had learned the value of character and the just obligation of moral duties." 2 Kent Com., 240.

The learned Parsons says: "And it has been held that an infant can rescind his purchase and recover the price he paid only when he is ready to return the thing purchased; nor do we think the rule would be unjust to the infant if it did not permit him to rescind his purchase unless he was both willing and able to return the thing purchased in substantially as good a condition as when he purchased it." 1 Par. on Cont., 327.

In Watts *vs.* Cresswell, 9 Vin. Abr., 415, Lord Cowper used an expression, the force of which has strengthened rather than weakened in the lapse of time, that "if an infant is old enough and cunning enough to contract and carry out a fraud, he ought to make satisfaction for it."

In some of the States the doctrine has been held, and tenaciously adhered to, that an infant, in order to successfully disaffirm his contract, must make complete restitution in all instances, whether he have it in kind or not at the time. Cummings *v.* Powell, 8 Tex., 81; Stuart *v.* Baker, 17 Tex., 417; Bingham *v.* Barley, 55 Tex., 281; Wade *v.* Love, 69 Tex., 520; Fitts *v.* Hall, 9 N. H., 441; Heath *v.* Stevens, 48 N. H., 251; Hall *v.* Butterfield, 59 N. H., 354.

The same doctrine, though not carried so far as in the Texas cases, is maintained in the following: Kerr *v.* Bell, 44 Mo., 120; Highly *v.* Barron, 49 Mo., 103; Baker *v.* Kennett, 54 Mo., 88; Smith *v.* Evans, 5 Humphrey (Tenn.), 70; Bailey *v.* Bamberger, 11 B. Mon., 115; Middleton *v.* Hoge, 5 Bush, 478; Bryant *v.* Pottinger, 6 Bush, 473; Adams *v.* Bell, 67 Md., 53; Badger *v.* Phinney, 15 Mass., 353; Manning *v.* Johnson, 26 Ala., 446; Riley *v.* Mallory, 33 Conn., 201. In the case last cited, the court states two exceptions to the rule that infants may avoid their contracts, one of course being in the case of necessaries, and the other "when he has enjoyed the benefits of them and cannot restore the other party to his original position."

The supreme court of Michigan, in a recent case, like this in some of its features, said: "Courts of equity will always view with special favor and guard with jealous care the rights of infants, but they will not lend their aid to infants or those who intrench themselves behind them, to perpetrate wrongs upon innocent parties, or aid in depriving such parties of their rights."

Notwithstanding the number and weight of the foregoing authorities, it may be admitted as probably true, as claimed by Mr. Schouler, the greater number of authorities hold that "it is only when an infant, on disaffirming his contract at majority, still has the consideration, that he can be compelled to return it as the condition of disaffirmance; restitution in full not being a prerequisite, but restitution of the advantages as they still remain to him and capable of being restored." Schouler, Dom. Rel., sec. 446.

The question is a new one in this jurisdiction, for we cannot agree with counsel for appellee that it is determined in Tucker *v.* Moreland, 10 Pet., 58. That was an action at law. Barry, a minor, executed a deed of trust, with power of sale, to secure a joint note of himself and Bing. He remained in possession, and upon coming of age conveyed the land and delivered possession to his mother. A sale was had under the trust deed, and the purchasers thereat brought ejectment against her. The then unsettled question as to whether infants' contracts are void or only voidable, was discussed at length by Mr. Justice Story, who delivered the opinion of the court, as well as the proper time and mode of disaffirmance, and what circumstances might amount to confirmation. There was no point made, nor could it have been made without resort to equity, upon the right to demand restitution as a prerequisite to the right to annul the

contract altogether. It is true, the learned justice did say: "To give effect to such disaffirmance, it was not necessary that the infant should first place the other party *in statu quo;*" but it is apparent that this was said with respect to the act of disaffirmance, as such at law, without regard to its effect in equity.

Feeling ourselves at liberty to adopt a view with respect to this vexed question consonant with our own reasoning, and in accordance with our own sense of sound public policy, as involved in the relation of infancy, we are of the opinion that the safer course lies between the extreme rule prevailing in Texas and probably in New Hampshire, that the consideration must, in all cases be restored before disaffirmance can be made effective, and the other that the return will be required only where the infant has it in specie,
294 or has retained and disposed of it, with full knowledge, after arriving at his majority.

It is in our view impracticable to attempt to make a general rule applicable to all cases; each must be decided in accordance with its own peculiar facts. The infant should be fully protected from those who deal with him, knowing his infancy, and with intent to overreach him, or who with an eye single to their own advantage, disregard his apparent disability, or his known improvidence and recklessness, and do him real injury, though it may be in no other way than by placing it within his power to stimulate and gratify inclinations and appetites which he has not the discretion or strength of character to control.

This view is well expressed in Bailey *v.* Bamburger, *supra*, as follows: "No doubt if one should take any advantage of an infant, or should overreach or defraud him, he would be so guilty of wrong himself that he could not demand a restoration of the consideration received by the infant before the latter could avoid his contract. Nor would we say that an infant of tender years, or one whose appearance indicates clearly that he is not twenty-one years of age, is embraced within the rule."

The rule that the infant shall in all cases be made to account for actual, permanent benefits received, seems now to prevail in New Hampshire, modifying to some extent the doctrine of earlier cases, and is thus forcefully stated: "The obligation to account for a benefit actually received secures ample protection from fraud and imposition, and at the same time prevents the privilege from being used to perpetrate fraud. It prevents their disability from being 'not their protection merely, but an extraordinary legal ability to rob others; not a shield but a sword; not a mere legal incapacity to be plundered by their fellow-men, but a vast capacity to plunder them with impunity.'"

Without further prolonging this discussion, we will conclude by saying, that in our opinion it would be a reproach upon the whole system of equity were we to permit the defendant, under all the facts and circumstances of this case, to hold and enjoy all the fruits of this fair and advantageous contract and then repudiate its obligation.

5. There is yet another ground upon which the right of appel-

lant to foreclose for the entire amount of her debt can be logically and justly maintained. All the authorities agree that where the infant has the consideration in hand at the time of the exercise of the power of disaffirmance it must be returned before the contract will be avoided in equity. Counsel for appellee do not deny this, but contend that this consideration must be on hand in specie. The contention, in other words, amounts to this: If an infant has received land or good- in exchange, he must have the same land or goods; if money, he must have the identical money.

According to this, if an infant may have made a good exchange of lands or property and then have re-exchanged, or resold them, for more property or money, at a good profit, which he has in his possession on arrival at majority, he may nevertheless disaffirm his own deed and recover the land first conveyed by him, without restitution to his vendee. Or, if he shall have received money in exchange for land at its full value, and then have invested it in other lands or in stocks or bonds worth far more at the time of disaffirmance of his deed than the land conveyed by him, he may notwithstanding repudiate his conveyance, recover his land, and make no account whatever.

The contention, upon analysis, appears as unsound in reason as it is vicious in morals. Courts of equity do not regard the shadow or the form, but the substance of things. They look, not at what has apparently been done, but go beneath the surface to ascertain what was actually done or intended to be done. They convert land into money and money into land in their interpretations of contracts, in the adjudication of the rights of parties founded therein, notwithstanding the conversion may stand in intention or direction only, in point of fact. They convert deeds into mortgages, and titles absolute on their face into trusts, when the proofs justify, and the interests of justice demand. They pursue trust property or funds, where the proof exists to trace them, through all the various transformations that cunning and fraud may be able to effect, and where the rights of innocent third parties have not intervened, impress them with the character of the originals.

When we look at the facts of this case, in this equitable light, it is plain to be seen that the infant defendant had in kind on the day of her attempted disaffirmance the very thing that she bargained for. Her object in effecting the loan was not to borrow money merely, but to extend a purchase-money lien, and to build a dwelling on the lot. She contracted at the same time for the erection of the house, and consented that the money should be held by Woodward, who, to that extent, was the agent and trustee of both parties, and disbursed by him in taking up the lien and paying for the house as its construction progressed. The money was intended and agreed to be converted into the lien and into the house. The lien still exists, though changed in form, and the house stands upon the lot, affording shelter to the infant and her second husband.

It follows from what has been said that the decree appealed from must be reversed, with costs to the appellant, and the cause re-

manded to the court below with directions to pass a decree of foreclosure in conformity with this opinion.

295 NOVEMBER 15, 1893.

SARAH UTERMEHLE, Appellant,
vs.
CARLOTTA M. MACGREAL *et al.* } No. 96.

On motion of Mr. C. A. Elliot, of counsel for the appellees, it is ordered by the court that said appellees be allowed an appeal to the Supreme Court of the United States from the decree entered herein by this court on giving bond in the sum of $4,000.

296 In the Court of Appeals of the District of Columbia.

ROSE M. TAYLOR, MAMIE E. NORMENT, Executrixes of Sarah Utermehle, Appellants,
vs.
CARLOTTA M. MACGREAL *et al.*, Appellees. } No. 96.

And now come the appellants, by William Redin Woodward and Edwards & Barnard, their solicitors, and William F. Mattingly, of counsel, and move the court to vacate the order passed herein on the 15th day of November, A. D. 1893, allowing an appeal to the Supreme Court of the United States from the decree of this court passed November 7th, 1893, for the reason that said decree is not a final decree and not appealable.

EDWARDS & BARNARD,
WM. REDIN WOODWARD,
Sol'rs for Appellants.
WM. F. MATTINGLY,
Of Counsel for Appellants.

297 To Charles A. Elliot, solicitor for appellees, Carlotta M. MacGreal and Wilburne Pierre MacGreal:

Please take notice that the above motion has this day been filed, and that the same will be called up and presented to the court at the hour of opening for its consideration and action on Monday next, the 20th day of November, A. D. 1893.

EDWARDS & BARNARD &
WM. REDIN WOODWARD,
Sol'rs for Appellants.
WM. F. MATTINGLY, *Of Counsel.*

Service of the above motion and notice and copy left this — day of November, 1893.

(Endorsed:) No. 96. In the Court of Appeals of the District of Columbia. Utermehle's Executrixes *vs.* MacGreal *et al.*, appellants. Motion to vacate order allowing appeal to Supreme Court U. S. The clerk will please file. Edwards & Barnard, of sol'rs for appellants. Court of Appeals, District of Columbia. Filed Nov. 16, 1893. Robert Willett, clerk.

298 In the Court of Appeals of the District of Columbia.

SARAH UTERMEHLE
vs.
CARLOTTA M. MCGREAL *et al.*

I hereby consent to the hearing of the motion to rescind the order of this court granting an appeal to the Supreme Court of the United States on Monday next, the 20th day of November, 1893, without further notice.

his
CHAS. A. x ELLIOT.
mark.

Witness:
MARY E. ELLIOT.

To Jas. S. Edwards, Esq.

(Endorsed:) No. 96. In the Court of Appeals of the District of Columbia. Utermehle's Executrixes *vs.* MacGreal & *al.* Consent of Mr. Elliot for appellees MacGreal to hearing of motion to rescind order allowing appeal. Court of Appeals, District of Columbia. Filed Nov. 20, 1893. Robert Willett, clerk.

299 Court of Appeals of the District of Columbia, December Term, 1893.

ROSE M. TAYLOR and MAMIE E. NORMENT, Executrices of Sarah Utermehle, Deceased, Appellants,
vs.
CARLOTTA M. MACGREAL *et al.*
No. 96.

On consideration of the motion of counsel for the appellants to vacate the order entered herein on November 15, 1893, granting an appeal to the Supreme Court of the United States from the decree entered in this cause by this court on the 7th day of November, 1893—

It is now here ordered by the court that said motion be, and the same is hereby, granted.

Per MR. CHIEF JUSTICE ALVEY.

December 5, 1893.

(Endorsed:) Court of Appeals of the District of Columbia, Dec. term, 1893. No. 96. Rose M. Taylor and Mamie E. Norment, executrices of Sarah Utermehle, dec'd, appellants, *vs.* Carlotta M. MacGreal *et al.* Order vacating allowance of appeal to Sup. Court U. S. Court of Appeals, District of Columbia. Filed Dec. 5, 1893. Robert Willett, clerk.

300 *Minute Entry.*

DECEMBER 5, 1893.

SARAH UTERMEHLE, Appellant,
vs.
CARLOTTA M. MACGREAL *et al.* } No. 96.

Ordered that order of November 15, 1893, granting appeal to Supreme Court of the United States be vacated and set aside, and that decree of this court entered November 7, 1893, be vacated and set aside.

301 Court of Appeals of the District of Columbia, December Term, 1893.

ROSE M. TAYLOR and MAMIE E. NORMENT, Executrices of Sarah Utermehle, Deceased, Appellants,
vs.
CARLOTTA M. MACGREAL *et al.* } No. 96.

It is now here ordered by the court that the decree entered in this cause by this court on the 7th day of November, 1893, be, and the same is hereby, vacated and set aside.

Per MR. CHIEF JUSTICE ALVEY.

December 5, 1893.

(Endorsed:) Court of Appeals of the District of Columbia, Dec. term, 1893. No. 96. Rose M. Taylor and Mamie E. Norment, executrices of Sarah Utermehle, dec'd, appellants, *vs.* Carlotta M. MacGreal *et al.* Order vacating decree of November 7, 1893. Court of Appeals, District of Columbia. Filed Dec. 5, 1893. Robert Willett, clerk.

302 *Minute Entry.*

DECEMBER 5, 1893.

SARAH UTERMEHLE, Appellant,
vs.
CARLOTTA M. MACGREAL *et al.* } No. 96.

Decree of supreme court of District of Columbia reversed, with costs, and decree of foreclosure and sale entered.

Per MR. CHIEF JUSTICE ALVEY.

303 Court of Appeals of the District of Columbia, December Term, 1893.

No. 96.

SARAH UTERMEHLE, Appellant,
vs.
CARLOTTA M. MACGREAL *et al.*, Appellees. } Equity. No. 12568.

Transferred from the supreme court of the District of Columbia pursuant to act of Congress of February 9, 1893.

This cause came on to be heard on the record from the supreme court of the District of Columbia and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court, this 5th day of December, A. D. 1893, that the decree of the said supreme court in this cause be, and the same is hereby, reversed, with costs to the appellees as against the defendant Carlotta M. MacGreal.

That there is now due to the complainants in this cause, the said Rose M. Taylor and Mamie E. Norment, executrices of Sarah Utermehle, deceased, from the defendant herein, Carlotta M. MacGreal (formerly Carlotta M. Moore), the sum of eight thousand (8,000) dollars, with interest thereon from the 22nd day of January, A. D. 1890, at the rate of six (6) per centum per annum until paid, and the costs of this suit.

304 That said sum and interest and costs be, and the same are hereby, declared to be liens and charges on the property described in the bill of complaint and proceedings in this cause and in the trust deed to the defendants William R. Woodward and Leroy M. Taylor, set out therein, to wit, that certain lot or parcel of ground situate and lying in the city of Washington, in the District of Columbia, and known as and being the lot numbered forty-nine (49), in the square numbered one hundred and eleven (111), as recorded in Liber J. H. K., at folio on page 373, in the surveyor's office, in the said District, and on all of the improvements thereon and the rights, ways, easements, and appurtenances thereto belonging or in anywise appertaining.

That unless the said defendant, Carlotta M. MacGreal, shall, on or before the 1st day of February next, pay or bring into this court to be paid unto the said complainants the said sum of money, with interest thereon as aforesaid until paid or brought in as aforesaid, together with the complainants' costs of this suit, to be duly taxed by the clerk, the said ground, improvements, and premises aforesaid be sold for the purpose of applying the proceeds of its sale to the payment thereof.

That William R. Woodward and Leroy M. Taylor be, and they are hereby, appointed trustees to make such sales, and that the course and manner of their proceedings shall be as follows: They shall first file with the clerk of the supreme court of said District a bond to the United States of America, executed by themselves, with a surety or sureties to be approved by one of the judges of the said

supreme court in the penalty of fifteen thousand dollars,
305 conditioned for the faithful performance of the trust reposed in them by any future order or decree in the premises. They shall then proceed to make sale of the said grounds and premises and improvements by public auction or outcry, having first given not less than ten (10) days' prior notice by daily insertions in one or more of the newspapers printed and published daily in said city of Washington and such other notice as they may deem proper of the time, place, manner, and terms of sale, which terms shall be as follows: One-third of the purchase-money to be paid in cash on the day of sale or on the ratification thereof by the said supreme court and the residue in two equal installments in one and two years from the day of sale, to bear interest from the day of sale at the rate of six (6) per centum per annum; such deferred payments to be represented by the promissory notes of the purchaser, bearing interest as aforesaid, or the purchaser, at his option, may pay all cash therefor. As soon as may be convenient after any such sale the said trustees shall return to said supreme court a full and particular account of the same, with an affidavit of the truth thereof and of the fairness of such sale or sales annexed. On the ratification of said sale by said supreme court and on the payment of the whole purchase-money the said trustees, by a good and sufficient deed to be executed and acknowledged agreeably to law, shall convey the said property to the purchaser or purchasers thereof and to his, her, or their heirs and assigns free, clear, and discharged of all claim of the parties to this cause and of any person or persons claiming by, from, or under them or either or any of them, and the said
306 trustees shall hold the funds and proceeds arising from such sale subject to the order, disposition, and determination of the said supreme court, not inconsistent, however, with the provisions of this decree and the opinion of this court.

And it is further ordered, adjudged, and decreed that this cause be, and the same is hereby, remanded to the said supreme court, with directions to proceed to carry into effect the provisions of this decree and to secure to the complainants the recovery of said sum of eight thousand (8,000) dollars, with interest and costs as aforesaid, from the proceeds of such sale and in the premises and in conformity with the opinion of this court filed herein.

R. H. ALVEY,
Ch. Justice.

(Endorsed:) No. 96. November term, 1893. In the Court of Appeals of the District of Columbia. Decree. Utermehle *vs.* MacGreal *et al.* Court of Appeals, District of Columbia. Filed Dec. 5, 1893. Robert Willett, clerk.

307 SARAH UTERMEHLE, Appellant,
vs.
CARLOTTA M. MACGREAL. } No. 96.

DECEMBER 8, 1893.

On motion of Mr. C. A. Elliot, for appellant, it is ordered by the court that an appeal to the Supreme Court of the United States from the decree entered herein by this court on December 5th, 1893, be allowed on giving bond in the sum of $4,000.

308 Know all men by these presents that we, Carlotta M. MacGreal and Wilburne P. MacGreal, her husband, as principals, and Alcinda Williams, widow, and Mary E. Moore and Frances Burke, widows, as sureties, are held and firmly bound unto Rose M. Taylor and Mamie E. Norment, executrices of the estate of Sarah Utermehle, deceased, in the full and just sum of four thousand dollars ($4,000), to be paid to the said Rose M. Taylor and Mamie E. Norment, executrices as aforesaid, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fifteenth day of December, A. D. 1893.

Whereas lately, at the December term of the Court of Appeals of the District of Columbia, in a suit depending in said court between Sarah Utermehle (who died pending the suit, and the said Rose M. Taylor and Mamie E. Norment, executrices as aforesaid, were substituted as complainants in place of said decedent), a decree was rendered against the said Carlotta M. MacGreal foreclosing the deed of trust involved in said suit, and the said Carlotta M. MacGreal having on the 8th day of December, A. D. 1893, entered in open court an appeal to the Supreme Court of the United States from the decree of the said Court of Appeals, which was allowed:

Now, the condition of the above-mentioned obligation is such that if the said Carlotta M. MacGreal shall prosecute her said
309 appeal to effect and answer all damages and costs if she fails to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

CARLOTTA M. MACGREAL. [SEAL.]
WILBURNE P. MACGREAL. [SEAL.]
ALCINDA WILLIAMS. [SEAL.]
MARY E. MOORE. [SEAL.]
FRANCES BURKE. [SEAL.]

Signed, sealed, and delivered in presence of—
[SEAL.] J. ARTHUR LYNHAM.
Notary Public.

December 15, 1893.

Approved by—
R. H. ALVEY,
Chief Justice.

Dec. 15th, 1893.

(Endorsed:) Court of Appeals of the District of Columbia. No. 96. (Equity. No. 12568.) Sarah Utermehle *vs.* Carlotta M. MacGreal *et al.* Bond on appeal to Supreme Court of the United States. Court of Appeals, District of Columbia. Filed Dec. 15, 1893. Robert Willett, clerk.

310 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing is a true copy of the transcript of the record and all proceedings had in said Court of Appeals in the case of Rose M. Taylor and Mamie E. Norment, executrices of Sarah Utermehle, dec'd, appellants, *vs.* Carlotta M. MacGreal *et al.*, No. 96, December term, 1893, as the same remains upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 19th day of February, A. D. 1894.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: Case No. 15,518. District of Columbia Court of Appeals. Term No., 336. Carlotta M. MacGreal and Wilburne P. MacGreal, appellants, *vs.* Rose M. Taylor & Mamie E. Norment, executrices of Sarah Utermehle, deceased. Filed March 5th, 1894.

167-188

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 95.

CARLOTTA M. MacGREAL AND WILBURNE P. MacGREAL, APPELLANTS,

vs.

ROSE M. TAYLOR AND MAMIE E. NORMENT, EXECUTRICES OF SARAH UTERMEHLE, DECEASED.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF AND ARGUMENT FOR APPELLANT.

W. P. BLACK,
For Appellant.

HENRY E. DAVIS,
Of Counsel.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 336.

CARLOTTA M. MacGREAL AND WILBURNE P. MacGREAL, APPELLANTS,

vs.

ROSE M. TAYLOR AND MAMIE E. NORMENT, EXECUTRICES OF SARAH UTERMEHLE, DECEASED.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF AND ARGUMENT FOR APPELLANT.

STATEMENT OF THE CASE.

On the 23d day of June, 1890, Sarah Utermehle filed in the supreme court of the District of Columbia her bill of complaint against appellants and William R. Woodward and Leroy M. Taylor, trustees. The bill appears at pages 1 to 5 of the printed Transcript of Record in this case. By the bill it was averred that on the 3d day of September,

1887, Henry C. Porter conveyed to Robert E. Moore and his wife (now Carlotta M. MacGreal), as tenants by the entirety, lot 49, in square numbered 111, in the city of Washington, which deed was duly recorded September 28, 1887; that at the time of said conveyance said lot was encumbered by a deed of trust from Porter to Seymour Cunningham and John S. Blair, dated March 8, 1886, payment of which was assumed as part of the purchase-money; that at the time of acquiring title from Porter the said Robert E. Moore and wife executed a trust deed of the same lot to Charles Early and Joseph T. Dyer to secure the sum of $1,600, balance of purchase-money due Porter on the purchase of the lot, and which trust deed was recorded September 28, 1887.

That on the 22d of October, 1889, said notes secured by said trust deeds were overdue and unpaid, and there were also taxes against the property, so that the same was in jeopardy; that in the meantime Robert E. Moore had, on the 20th day of April, 1888, died, and by his death the premises became the absolute and separate property and estate of his widow, subject to the encumbrances referred to; that on the 22d day of October, 1889, she obtained from complainant a loan of eight thousand dollars, giving therefor her note of that date for that amount, due three years after date, and agreeing to pay interest thereon at the rate of 6 per cent. per annum, payable quarter-yearly; that to secure said note she executed a trust deed of the same date upon the lot described to William R. Woodward and Leroy M. Taylor, as trustees, and agreed that out of the moneys borrowed she "would commence the construction of a substantial brick dwelling upon said lot and premises, with suitable provisions to secure the payment or application of the proceeds of said loan (not required to take up the said overdue notes, representing said unpaid purchase-money, taxes then due, expenses of examination of title to said land and premises, conveyance, and other incidental expenses incurred on account of the negotiation of said loan, all of

which were to be paid therefrom) toward such construction;" that, relying upon this agreement thus made, complainant made the loan of eight thousand dollars, and thereupon complainant paid therefrom the amount of the previous liens, including taxes, amounting to $291.99, and that the balance of the $8,000 was expended in connection with the erection of a brick building upon the premises, known as 1612 19th street northwest; that said premises were occupied at the time of the filing of the bill by the defendants MacGreal, the said Carlotta having married the said Wilburne after the making of the loan; that it was provided in the trust deed that on default in the payment of any quarter-yearly installment of interest the whole indebtedness should become immediately due and payable, and that complainant was entitled therefore to file her bill; that complainant was the *bona fide* holder and owner of the note; that default had been made in the payment of the interest installment falling due April 22, 1890, and that there was due to her the full amount of the loan, with interest from January 22, 1890.

Defendants were required to answer under oath, and it was prayed that the defendant Carlotta M. MacGreal be decreed to pay the amount of the indebtedness, with interest and costs; that said trust deed should be foreclosed, the premises sold, and the proceeds of sale, so far as necessary, applied to the satisfaction of the debt, and for "such other and further relief in the premises as the nature of the case might require."

Taylor and Woodward, the trustees, on October 31, 1890, filed their admission of the allegations of the bill.

On the 13th of October, 1890, Carlotta M. MacGreal filed her separate answer (R., pp. 6, 7) in which, after admitting the statements of the bill as to title and as to the execution of the various encumbrances, etc., she stated that she executed the deed of trust and note for $8,000, but that said moneys never in fact came into her hands, possession, or

control, but were placed in the hands of a trustee selected by the complainant and were disbursed by such trustee; that the moneys represented by said note did not pay for the house upon the lot, but that liens had been filed against the house aggregating $3,339.63; and in the closing paragraph of her answer she states that at the time of the execution of the note and trust deed sought to be foreclosed, as well as at the making of the earlier trust deeds, etc., she was an infant, under the age of twenty-one years; that she was born June 20, 1869, and that immediately after attaining majority, she, by paper-writing, duly executed by her, of date June 23, 1890, and by deed to William P. Black, dated June 29, 1890, and duly recorded, etc., absolutely disclaimed her alleged contract with the complainant, having previously notified complainant through her attorney of her purpose so to do.

The defendant W. P. MacGreal filed his answer *pro forma*, denying personal knowledge of the matters in controversy, and the issues were made up by joinder on the answers of the defendants MacGreal.

The testimony taken in the cause is found in the Transcript of Record, pages 13 to 149, inclusive.

Upon hearing in the supreme court of the District of Columbia the bill was dismissed for want of equity, the opinion of the court being delivered by Mr. Justice Bradley, the order of dismissal being entered June 15, 1893 (R., p. 9). In the meantime, on the 28th of March, 1893, the death of the original complainant had been suggested and complainants Taylor and Norment substituted. From the decree of dismissal of the bill an appeal was duly prosecuted and the cause was transferred to the Court of Appeals of the District of Columbia under the act of Congress of February 9, 1893 (R., p. 150). In that court a decree was entered December 5, 1893, reversing the decree below, providing for foreclosure and remanding the cause to the supreme court,

District of Columbia, with direction to enforce the decree of foreclosure in conformity with the opinion of the court. That opinion was delivered by Mr. Justice Shepard and is found at pages 151 to 160, inclusive, of the Record.

From that decree of reversal the present appeal is prosecuted.

ASSIGNMENTS OF ERROR.

The court below erred:

1. In decreeing a foreclosure of the deed of trust to Woodward and Taylor.

2. In reversing the decree of the supreme court of the District.

3. In not decreeing a dismissal of the bill of complaint.

The testimony in this case establishes, in reference to the transaction in which the mortgage sought to be foreclosed was given, the following facts:

That in the early part of the month of October, 1889, Mrs. MacGreal (then Mrs. Moore, a widow), being the owner of the lot described in the trust deed, applied to Frank T. Rawlings, a real-estate and loan broker in Washington, for a loan of $8,000, offering this property as security: that Mr. Rawlings presented the matter to Mr. Taylor, who was the son-in-law and agent of Mrs. Utermehle, and who, after examination of the property and understanding that a portion of the money was to be used to pay off prior encumbrances and the residue for the purpose of imp oving the property, agreed to make the loan provided the title was approved by Mr. W. R. Woodward, who was selected as the attorney of Mrs. Utermehle in the premises. Mr. Woodward had been the attorney for *Mr.* Utermehle for many years before his death, and thereafter continuously had acted for Mrs. Utermehle (R., p. 19). It was stipulated as a condition

of the proposed loan that the money should be retained and disbursed by Mr. Woodward, and was not to pass into the hands of Mrs. MacGreal. Mr. Woodward stated that it was Mrs. Utermehle who stated that he should hold the money (R., p. 24), and he further states (R., p. 15 *et seq.*) that from the $8,000 he was to pay the prior encumbrances upon the property, including taxes, the expenses of examining the title, the commission of the broker, in short, all that was necessary to clear the title, and to disburse the balance upon architect's certificates for work upon the proposed building as it progressed, and he says that the entire $8,000 was thus disbursed except the sum of $93.01 remaining in his hands, the particulars of the disbursement being evidenced by his statement (Ex. H, R. pp. 47, 48). One item in this exhibit is as follows:

"W. F. Mattingly, costs in No. 11828, equity, $4.10."

Concerning this item the evidence of Mr. Woodward and his son shows that, upon examining the records as to the condition of the title and before any of the money had been paid over, it was discovered that a suit was then pending on the equity side of the supreme court of the District of Columbia, numbered 11828, and concerning that suit Mr. Woodward testified (R., p. 21) that he observed the suit upon the docket; knew that it was instituted to restrain a sale of this property, and "required it to be dismissed before the loan was made;" that he "knew of the existence of that suit at the time of making the loan." Mr. Woodward's son and associate in business testified (R., p. 27) that the docket showed the names of the parties to the suit; that it was still pending, and that it was to restrain a sale under a deed of trust, but that while he made some effort to get at the papers he never, in fact, obtained possession of them. Further upon this subject, Mr. Woodward, the attorney of the complainant, stated (R., p. 26) that he saw it was a suit against Porter, and "that Porter was in these deeds of trust," and he therefore required it to be dismissed. Concerning the

nature of this suit, no better statement appears in the record than in the opinion of Mr. Justice Shepard, at page 151, where it is stated as follows:

"Upon her failure to pay the debt due Porter the lot was advertised for sale, under the trust deed, in May, 1889.

"Mrs. Moore, through her mother as next friend, filed a bill to enjoin this sale on the ground that she was a minor when she signed the deed of trust, and procured a restraining order, which was afterwards discharged."

The testimony conclusively established that Mrs. MacGreal was born June 20, 1869, in Washington, D. C. (R., p. 133), and that on the 23d day of June, 1890, she formally gave notice of disaffirmance of the trust deed in question, and caused to be spread upon the records a disclaimer of liability thereunder (R., pp. 124, 125), and at a later date, under advice of counsel (R., p. 145), she executed a deed of the property in question to William P. Black, which was duly put of record. (R., p. 136.)

POINTS AND AUTHORITIES.

I.

The note and mortgage sought to be foreclosed in this case, having been executed by the maker during her minority and without any fraud upon her part, and there having been nothing in the nature of ratification at any time, were subject to disaffirmance upon her attaining majority.

Sims vs. Everhardt, 102 U. S., 300.
Hitz vs. Jenks, 123 U. S., 297, *302*.
Tucker *vs.* Moreland, 10 Pet. (U. S.), 58.
Pitch *vs.* Laycock, 7 Ind., 412.
Myers *vs.* Landes, 7 Dana (Ky.), 507.
1 Am. L. Cases, p. 259.
Brantley *vs.* Wolf, 60 Miss., 422.
Wells *vs.* Lucas, 24 Fed. R., 82.

II.

In this case the record shows formal and complete disaffirmance upon attaining majority, and such disaffirmance effectually avoided such note and mortgage.

See cases cited under points I and III.

III.

While it is the law that if a minor, at the time of attempting disaffirmance of a contract made during minority, have in hand the fruits of the contract *in specie*, there must be a restitution of such fruits as a condition to the exercise of the right of disaffirmance; yet such limitation upon the right of disaffirmance is dependent upon the then possession of the specific and identical property received by the infant under the contract. If the infant has parted with the specific thing, or if its form has been so changed that its return *in specie* is impossible, then the right of disaffirmance is unrestricted.

Tucker vs. Moreland, 10 Pet., 58.
Chandler vs. Simmons, 97 Mass., 508.
Bishop on Contracts, §§ 940 and 921.
Ewell, L. C. on Inf. & Cov., p. 119.
Miller vs. Smith, 26 Minn., 248.
Price vs. Furman, 27 Verm't, 270.
Pitch vs. Laycock, 7 Ind., 412.
Carpenter vs. Carpenter, 45 Ind., 142.
Mustard vs. Whitford's Heirs, 15 Grat., 329.
Miles vs. Lingerman, 24 Ind., 385.
Shaw & Wf. vs. Boyd, 5 Serg. and R., 309.
Robbins vs. Eaton, 10 N. H., 561.
Catlin vs. Haddox, 49 Conn., 492.
Cressinger vs. Welch, 15 Ohio, 156.
Connor vs. Birdsall, 1 John. Ca., 127.
1 Am. Lead. Cas., 259, and citations.
Tyler on Inf., sec. 37, and citations.

IV.

While in some jurisdictions it has been held that the right of disaffirmance will be denied where the infant has been guilty of fraud in inducing the contract, such is not the law as announced by *this* Court; and we further insist that that rule cannot be invoked in the case at bar, for the reason that there was no fraud on the part of appellant, either in connection with the execution of the note and mortgage in suit or the procuring of the loan or at any time thereafter. The exercise of the right of disaffirmance is not a fraud within the contemplation of the law, however it may work a hardship upon the other party to the contract; nor is the failure to disclose infancy at the time of entering into the contract such fraud.

Sims vs. Everhardt, 102 U. S., 300, *313*.
Baker vs. Stone, 136 Mass., 405.
Tucker vs. Moreland. 10 Pet., 58, *77*.
McCarty vs. Carter, 49 Ill., 53.
Wieland vs. Kobick, 110 Ill., 16.
Brantley vs. Wolf, 60 Miss., 422.
Conrad vs. Lane, 26 Minn., 389.
Whitcomb vs. Joslyn, 51 Vt., 79.
Wilson vs. Branch, 77 Va., 65.
Myers vs. Landes, 7 Dana, 507.
Gale vs. Martin, 4 Ch. Div., 428.
Stekeman vs. Dawson, 1 De G. & S., 90.

V.

But in the case at bar there was notice to complainant through her attorney of the infancy of the borrower—constructive notice, if not actual—and because of that notice there can be no denial of the right of disaffirmance.

Dibble vs. Jones, 5 Jones Eq. (N. C.), 389.

VI.

There is no room to invoke the doctrine of equitable subrogation in the present case, for the reason that the foundation for such subrogation was not laid in the pleadings. The bill does not seek to enforce a lien under the earlier mortgages, which were paid off out of the money loaned by complainant; but complainant stakes her entire claim for relief upon the proposition that she is entitled to enforce by foreclosure the mortgage in controversy.

Coe vs. N. J. Mid. Ry. Co., 31 N. J. Eq., 105.
Tradesman's, &c., Ass'n vs. Thompson, 32 N. J. Eq., 133.
Bohn Sash & Door Co. vs. Case, 42 Neb., 281.

ARGUMENT.

I.

No dispute can be attempted upon this record of the fact that Mrs. MacGreal was, on the 22d of October, 1889, when she executed the note and trust deed in controversy in this case, a minor, under the age of twenty-one years. She attained her majority on the 20th day of June, 1890. Neither can it seriously be pretended that at the time of the execution of said note and mortgage there was any fraudulent conduct upon her part—any conduct which the law stamps as fraudulent on the part of an infant. The effort of the learned judge of the Court of Appeals, in the opinion in this case, to make out something in the nature of a constructive fraud, we respectfully submit, totally fails in the light of the evidence in the case. That portion of the opinion bearing upon the question now under consideration commences upon page 153 of the printed Transcript and extends to page 156,

being numbered in the opinion 3. On page 154 the following language appears:

"The defendant in this case did not declare herself in words to the complainant to be of full age, but the case is, in our opinion, none the weaker and probably stronger for that in its appeal to equity. * * * Here was a woman grown and a widow after several years of marriage. She had attended to her own business before without question from her mother and natural guardian who lived with her. There was nothing to excite suspicion or provoke inquiry as to her age. The fact that she had a few months before alleged infancy, in an attempt to defeat a just debt which was unknown to complainant, when coupled with her attempt to defeat this claim, would seem to justify the charge that her failure to make known her disability was the result of deep design, thus giving it all the force and effect without any of the resultant weakness of a deliberate misrepresentation."

This portion of the opinion was shortly preceded by a suggestion as to the flexibility of the common law—"its power of expansion and adaptation to the changing needs and circumstances of a complex civilization advancing under the influences of learning, discovery, and invention"—and the learned judge then added:

"While sudden and radical changes in these rules should only be reached by legislative power and not by the courts, yet these should not adhere to the applications of the principles made in other days under circumstances and surroundings which may have completely changed, bearing the reason of the old rule with them."

It may be mentioned in passing without impropriety that the record in this case shows that appellant was married to Robert E. Moore September 14, 1886 (P. R., p. 72), when she was less than seventeen years and three months old; that Mr. Moore died April 20, 1888 (P. R., p. 60), they having lived together but nineteen months, and that the record does *not* disclose the widow at any time in the aspect of a business woman.

In the light of the repeated decisions of this Court we respectfully submit that the decision in the present case can only be explained upon the theory that it was concluded by the Court of Appeals that the time had come when the courts should no longer "adhere to the applications of the principles made in other days" in the matter of recognizing and enforcing the right of an infant to disaffirm a contract upon attaining majority.

But we respectfully insist that if such protection to an infant is to be withdrawn that principle of protection has been so long imbedded in the law and enforced by the courts that it should require legislative enactment, rather than judicial deliverance, to change the well-established and almost immemorial law, and we respectfully insist that there is nothing in the present case which calls for such a radical change of the law in reference to infancy.

In the case of *Sims vs. Everhardt*, 102 U. S., 300, the following facts appear:

When Mrs. Sims was about 18 years of age, having been married about a year preceding, she acquired certain estates by deed from her father, dated April 3, 1845. On May 28, 1847, being still an infant, the property was sold to the defendant Everhardt under a deed executed jointly with her husband and having all legal formalities as to its execution and acknowledgment.

The purchase-money was fully paid and Mrs. Everhardt entered upon the possession of the premises and continued in possession until her death, in 1871, paying taxes, putting valuable improvements upon the property, *and also paying up a mortgage which was on the property at the time she acquired it.*

Mrs. Sims was divorced from her husband in February, 1870, and within two months thereafter gave due notice of her disaffirmance of her deed to Mrs. Everhardt and demanded possession of the land, which being refused she brought her action in chancery against the devisees of Mrs.

Everhardt to set aside the deed and to recover the property. A decree was entered by the court below dismissing the bill on the ground that it did not appear that she had disaffirmed her deed within a reasonable time after the attainment of her majority, and that she was bound to act in the matter of disaffirmance, notwithstanding her coverture.

It was held by *this* Court, reversing the decree below, that her deed was voidable, and, inasmuch as she was under coverture until February, 1870, and had done nothing after that time to confirm the deed, her notice, given two months after her divorce, was in apt time for the purpose of disaffirmance, and her suit was also brought in apt time, and she was entitled to the relief which she sought under her bill. A part of the opinion of the Court is as follows:

"In view of these considerations, our conclusion is that Mrs. Sims, the complainant, having been a *feme covert* until 1870, and never having done during coverture any act to confirm the deed which she made during infancy, could effectually disaffirm it in 1870, when she became a free agent, and that her notice of disaffirmance and her suit avoided her deed made in 1847.

"The remaining question is whether she is estopped by anything which she has done from asserting her right to the land in controversy.

"In regard to this very little need be said. It is not insisted that she did anything since she attained her majority which can work an estoppel. All that is claimed is that when she made her deed she asserted that she was of age and competent to convey. We are not, therefore, required to consider how far a married woman can be estopped by her acts when she has the single disability of coverture. The question is whether acts and declarations of an infant during infancy can estop him from asserting the invalidity of his deed after he has attained his majority. In regard to this there can be no doubt, founded either upon reason or authority. Without spending time to look at the reason, the authorities are all one way."

See also the case of *Tucker vs. Moreland*, 10 Pet., 59.

We confidently maintain that the rule announced in this case by this Court has never been qualified by this Court nor in any manner withdrawn.

A concise statement of the law is found in 1 American Leading Cases, 259, and is as follows:

"The right of an infant to avoid his contracts is an absolute and paramount right, superior to all equities of other persons, and may, therefore, be exercised against *bona fide* purchasers from the grantee."

In *Pitch vs. Laycock*, 7 Ind., 412, it is said:

"He who deals with an infant deals at his peril and subject to the right of the infant to disaffirm and avoid his contract. This is the case even though he deal with the infant in ignorance of the infancy or on a fraudulent representation of the infant that he is of full age."

In *Sims vs. Everhardt* this Court further said (102 U. S., 311):

"The person who takes a deed from an infant *feme covert* knows that she is not *sui juris*, and that she will be under the control of her husband while the coverture lasts. He is bound to know, also, that she has the disability of infancy. He assumes, therefore, the risk attending both those disabilities."

In *Meyers vs. Landes*, 7 Dana, 507–521, the supreme court of Kentucky speaks as follows:

"The right of an infant to avoid his deed is an absolute and uncontrollable privilege, founded upon an incapacity conclusively fixed by the law, and it enforces them without inquiry into particular circumstances and without regard to consequences. It must be so in order to maintain them. The right of an adult grantor to avoid his deed for fraud stands upon an entirely different basis. * * * But, again, infancy is not, like fraud a circumstance wholly extraneous from the title. The deed shows who the grantor is; the purchaser knows that an infant grantor cannot pass

an indefeasible title; he is bound to know the identity of the person who assumes to convey the title, and it is not an unreasonable requisition that he shall know whether the grantor under him who claims title is under incapacity or not. In this view of the subject no purchaser under an infant's deed is innocent in the eye of the law until the title has been confirmed by the matured consent of the grantor."

Quotations in support of this doctrine might be multiplied, but perhaps none could be found more clearly evidencing the rule for which we contend than those above given; and we feel that in a case where this Court has spoken so clearly, so unequivocally, there can be no occasion for further multiplying citations. We respectfully insist that the decision reached by the district court of appeals is at variance with the law as laid down by *this* Court, and, without animadverting upon the action of that court, we think ourselves justified in calling attention to a quotation from the case of Wells *vs.* Seixas, 24 Fed. Rep., 82, as in point. In that case the following language appears:

"It may be conceded that there are many points of difference between the *Everhardt case* and the case at bar. * * * It may also be conceded that the circumstances of the *Everhardt case* did not necessarily require the enunciation of the broad rule just quoted. Notwithstanding this, it cannot be gainsaid that the Supreme Court have, in words too plain to be misunderstood, expressed the opinion that the weight of the authority is that the deed of an infant may be avoided at any time after becoming of age until he is barred by the statute of limitations, provided there has been no word or act on his part indicating assent. It seems to have been the intention of the Supreme Court to announce a clear and general rule which should put an end, so far at least as the Federal tribunals are concerned, to the existing confusion and conflict of authority. * * * This being the view entertained as to the scope of the decision in *Sims vs. Everhardt*, it is manifestly the duty of this court to follow it. The Supreme Court may change or modify the rule therein stated. This court is not permitted to do so."

II.

We think it will not be seriously questioned that the record in this case shows an effective disaffirmance by the infant upon her attaining her majority, so far as that disaffirmance could be effected by positive acts declaratory of her purpose to disaffirm. Whether she was precluded from the exercise of the right of disaffirmance will be considered later, but we desire to refer briefly to the evidence in the record for the purpose of showing what was done by Mrs. MacGreal upon attaining her majority in the direction of a disaffirmance.

On the 30th of May, 1890, having taken advice of her attorney, her attorney prepared a draft of a letter which appears at page 118 of the printed Record, and on June 13, 1890, a letter was written by Mrs. MacGreal to Mrs. Taylor advising her of her purpose to disaffirm upon reaching her majority (R., p. 116). On the 23d day of June a formal declaration of renunciation was served upon Mrs. Utermehle and, with the affidavit showing service, was filed for record in the recorder's office for the District of Columbia (R., pp. 125, 126); and finally, on the 27th of June, 1890, Mrs. MacGreal, with her husband, executed to William P. Black a deed reciting that it was executed for the purpose of formally disaffirming the deed of trust to Mrs. Utermehle, which deed to said Black was recorded in the recorder's office July 14, 1890. (R., p. 136.)

It is not pretended that between the date of attaining her majority and the service and recording of this notice and the executing and recording of this deed anything was done by Mrs. MacGreal that in the remotest degree evidenced any intention to affirm the trust deed in controversy. Unless, therefore, precluded by reason of some estoppel or disability to disaffirm at the time of the execution of these notices and this deed, this record shows an effective disaffirmance by

Mrs. MacGreal of the trust deed in question upon attaining majority, and such disaffirmance operated to avoid the note and mortgage.

III.

It was held by the Court of Appeals of the District of Columbia that the complainant was entitled to a decree of foreclosure, and that the attempted disaffirmance of the trust deed by Mrs. MacGreal was ineffectual because Mrs. MacGreal did not return to Mrs. Utermehle the money received by her upon the loan. An attempt was made to dispose of this case upon the doctrine that the right of an infant to rescind his contract upon attaining majority is conditioned upon a restoration by him of that which he received under the contract. The contention of appellant herein that under the law the rule requiring a return by the infant of that which was received under the contract as a condition of the right of disaffirmance applies *only* in cases where the original consideration of the contract was in the hands of the infant *in specie* upon attaining majority was disposed of in the opinion now under review in the following sententious utterance (R., p. 159):

"The contention upon analysis appears as unsound in reason as it is vicious in morals."

Whatever may be thought of the ethics of some rules of law, they are so thoroughly established that a mere denunciation of them can hardly operate their abrogation, and we submit that the rule for which we are now contending is of this character. We maintain, with all respect, that there is substantially no exception to the rule; that a restoration of the property received by the minor is required as a condition of disaffirmance only in cases where it appears the party disaffirming has at the time of the disaffirmance the very thing received in hand, and that the reason upon which that rule is founded is that by reason of the disaffirmance the

title to the particular thing secured under the contract and which remains at the time in the hands of the infant remains in the party against whom the disaffirmance is exercised, and the disaffirmance, to use the language of the courts, divests the infant of all right to retain the same, so that it would be a fraud to allow the party seeking disaffirmance to hold that particular property and at the same time avoid his contract. In support of this contention we will quote from a few of the authorities.

This Court has spoken in no uncertain terms upon this point. In *Tucker vs. Moreland*, 10 Pet., 58 (which was a case involving a deed in the nature of a mortgage given by a minor to secure a note of which he was the joint maker with another party and which mortgage the court held to have been effectually disaffirmed by a subsequent deed by the minor, upon attaining his majority, to his mother), this Court uses the following language, found at pages 73 and 74 of the report:

"Upon these grounds we are of opinion that the deed of Barry to Mrs. Moreland was a complete disaffirmance and avoidance of his prior deed to Wallach, and consequently instruction given by the circuit court was unexceptionable. To give effect to such disaffirmance it was not necessary that the infant should first place the other party *in statu quo*."

In Chandler *vs.* Simmons, 97 Mass., 508, the court speaks as follows at page 514:

"Another ground relied on by the defendant is that the deed cannot be avoided without the return of the consideration. We do not understand that such a condition is ever attached to the right of a minor to avoid his deed. If it were so, the privilege would fail to protect him when most needed. It is to guard him against improvidence which is incident to his immaturity that this right is maintained (*Gibson vs. Soper*, 6 Gray, 279–282; *Boody vs. McKenney*, 23 Maine, 517). If the minor, when avoiding his contract, have in his hands any of its fruits specifically, the act of avoiding the contract by which he acquired such property

will divest him of all right to retain the same, and the other party may reclaim it. He cannot avoid in part only, but must make the contract wholly void if at all, so that it will no longer protect him in the retention of the consideration (*Badger vs. Phinney*, 15 Mass., 359; *Bigelow vs. Kinney*, 3 Verm., 353); or if he retain and use or dispose of such property after becoming of age, it may be held as an affirmance of the contract by which he acquired it, and thus deprive him of the right to avoid (*Boyden vs. Boyden*, 9 Met., 519; *Robbins vs. Eaton*, 10 N. H., 561); but if the consideration has passed from his hands, either wasted or expended during his minority, he is not thereby to be deprived of his right or capacity to avoid his deed any more than he is to avoid his executory contracts, and the adult who deals with him must seek the return of the consideration paid or delivered to the minor in the same modes and with the same chances of loss in the one case as in the other (*Dana vs. Stearns*, 3 Cush., 272–276). It is not necessary in order to give effect to the disaffirmance of the deed or contract that the other party should be placed *in statu quo*. (*Tucker vs. Moreland*, 10 Pet., 65–74; *Shaw vs. Boyd*, 5 S. & R., 309.)"

Mr. Bishop in his work on Contracts, sec. 940, thus states the law:

"After the rescission by him [an infant] of any contract, executory or executed, if there is in his possessien any article which he had from the other party as a consideration for it, such party may take the article or may recover it by process of law; but the right of rescission by the infant is superior to the right of the adult to have back the thing, so that if the former has parted with it and has it not, he may still rescind, though he does not return either the thing or its equivalent."

And the same author also says, in section 921, upon this same subject:

"The mere repudiating of his agreement is not deemed a legal fraud, and if he has consumed the consideration of his deed his inability to restore it will not prevent a disaffirmance."

Mr. Ewell in his Leading Cases on Infancy and Coverture, after a full review of the authorities, states the law at page 119 as follows:

"The true doctrine, and the one supported by the weight of authority (at least in the United States), would seem to be that where an infant disaffirms his executed contract after arriving at age and seeks a recovery of the consideration money from him and where the *specific* consideration received by him remains in his hands *in specie* at the time of the disaffirmance and *is capable of return*, it must be returned by him; but if he has during infancy wasted, sold, or otherwise disposed of or ceased to possess the consideration and has none of it in his hands *in kind* on arriving at majority, he is not liable therefor and may disaffirm without tendering or accounting for such consideration."

To the same effect see Tyler on Infancy, etc., sec. 37, and cases cited; also see authorities cited under point III, *ante*.

In *Miller vs. Smith*, 26 Minn., 248, the court used the following language:

"If an infant borrow money upon mortgage security upon his property without any reference to his necessities and cannot, upon reaching the age of legal discretion and capacity, or before, repudiate the transaction except upon the condition of returning the amount of the loan, whether he has it or not, this privilege which the law accords to infancy for its protection will generally be of little benefit. Under the operation of such a rule many lenders would soon become permanently possessed of the property of infant spendthrifts, for with them the temptation to borrow money for gratification is generally too great to be resisted. Its adoption, as a rule, would be in violation of the principle of protection that underlies the whole doctrine of the law pertaining to the dealings and contracts of infants. In the case at bar it is not shown that the plaintiff retained any portion of the borrowed money at the time he gave notice to defendant and demanded a return of his property, but it affirmatively appears that the defendant did spend most of it in taking up the Law note. Under these circumstances an offer to

return the loan or to repay it was not necessary to enable him to reclaim his property or to maintain this action."

In the light of these authorities, enunciating the law upon this point, let us turn for a moment to a consideration of the facts disclosed by the evidence in the present record.

Admittedly not one penny of the $8,000 secured by the mortgage sought to be foreclosed in this case ever in fact came into the hands of the infant or into the hands of any agent appointed by her. It was exacted by Mrs. Utermehle, as testified by Mr. Woodward (R., p. 24), that Mr. Woodward, *her* attorney in the matter, should hold and disburse the money, and he accordingly did so. In disbursing this money he paid out over $3,300 in the way of prior encumbrances, costs of court, commissions on the loan, his own services in examining the title, etc.

Of course this money, never having come to the hands of Mrs. MacGreal, was not in her hands *in specie* at the time of her exercise of her right of disaffirmance, and could not be returned by her. As to the residue of the amount of the loan, except the sum of $93.01 which remained at the time of the hearing in Mr. Woodward's hands, the money was paid out upon the building, which was constructed upon the property covered by the mortgage.

At the time of negotiating this loan Mrs. MacGreal owned the lot in question, and also owned one-half of the party walls upon either side of the lot, and which party walls were used in the erection of her building. The money was paid out by Mr. Woodward to the parties constructing the building. It never came *in specie* into the hands of Mrs. MacGreal, and in the nature of things it was impossible for her to return it in kind when she elected to disaffirm the contract.

Upon the cross-examination of Mrs. MacGreal complainant's counsel took pains to bring out the fact that, aside from the property in question and one other piece of real

estate of undetermined value, she never had, and had not at the time of testifying, *any means or property whatever*—had not the money to make repayment of this loan (P. R., p. 75). She could not be called upon to surrender up the building into which the money went, for that would carry with it her independent property, which was paid for in part, at least, at and after the time of the acquisition of title, by her husband and herself, by moneys not derived in any manner from this loan. To say that she must surrender the building into which this money went because that building was in her possession, together with the lot upon which it stood, would be to deny the right of disaffirmance except upon the condition that she put the lender *in statu quo*. This, as we have seen from all of the authorities that are entitled to consideration in this Court, she should not be required to do, either legally or equitably.

IV.

We concede that in some jurisdictions, limited in number, and by decision only of recent date it has been ruled that the right of disaffirmance will be denied where the infant has been guilty of fraud in inducing the contract. We maintain, however, that that is not the rule established by the decisions of this Court and by which all of our Federal tribunals are governed; and we further insist that as a matter of fact no fraud is shown in the record in this case in connection with the execution of the note and mortgage in suit, or the procuring of the loan on the part of the infant, nor any fraudulent conduct upon her part thereafter. The exercise of the right of disaffirmance is not a fraud within the contemplation of the law, however it may work a hardship upon the other party to the contract, nor is the mere failure to disclose infancy at the time of entering into the contract such fraud.

It is conceded in the case at bar that there was no misrep-

resentation whatever by Mrs. MacGreal touching the matter of her age at the time of the execution of the note and mortgage in controversy. It was elicited from her in the course of her cross-examination (R., p. 107) that she did not at the time of negotiating the loan speak in reference to her age at all, because she did not think of it at that time, and that she executed the deed of trust "in perfect good faith" and with the intention and expectation of paying the loan. This testimony having been elicited by the cross-examination, and there being no counter-testimony whatever in the record, we insist that appellees are bound by this statement of Mrs. MacGreal, particularly as that statement is in entire harmony with all the facts and circumstances proved in this case.

To a few of the authorities which we rely upon in support of our contention last above stated we now call attention.

Said this Court, in *Sims vs. Everhardt*, at page 313 of the report (102 U. S.):

"The question is whether acts and declarations of an infant during infancy can estop him from asserting the invalidity of his deed after he has attained his majority. In regard to this there can be no doubt, founded either upon reason or authority. Without spending time to look at the reason, the authorities are all one way. An estoppel *in pais* is not applicable to an infant, and a fraudulent representation of capacity cannot be an equivalent for actual capacity (*Brown vs. McCune*, 5 Sandf., N. Y., 224; *Keen vs. Coleman*, 39 Pa. St., 299). A conveyance by an infant is an assertion of his right to convey. A contemporaneous declaration of his right or of his age adds nothing to what is implied in his deed. An assertion of an estoppel against him is but a claim that he has assented or contracted. But he can no more do that effectively than he can make the contract alleged to be confirmed."

Again this Court said in *Tucker vs. Moreland*, at page 77 of the report (10 Pet.):

"In many cases the disaffirmance of a deed made during infancy is a fraud upon the other party; but this has never been held sufficient to avoid the disaffirmance, for it would otherwise take away the very protection which the law intends to throw round him to guard him from the effects of his folly, rashness, and misconduct. In Saunderson *vs.* Marr (1 H. Bl., 75) it was held that a warrant of attorney given by an infant, although there appeared circumstances of fraud on his part, was utterly void, even though the application was made to the equity side of the court to set aside a judgment founded on it. So, in Conroe *vs.* Birdsall (1 John. Cas., 127), a bond made by an infant, who declared at the time that he was of age, was held void, notwithstanding his fraudulent declaration, for the court said that a different decision would endanger all the rights of infants. A similar doctrine was held by the court in Austin *vs.* Patton (11 Serg. and Rawle, 309, 310). Indeed, the same doctrine is to be found affirmed more than a century and a half ago in Johnson *vs.* Pie (1 Lev., 169; S. C., 1 Sid., 258; 1 Keble, 995, 913 (*a*)."

In *Baker vs. Stone*, 136 Mass., 405, the court speaks as follows (p. 406):

"Taking the whole bill, the strongest statement of false representation that can be gathered from it is that a minor, knowing her minority and not disclosing it, borrowed money from a person who she knew believed her to be of full age and gave a note and a mortgage on land to secure it. We think these facts would not estop her from avoiding the mortgage and the note. * * * The bill does not aver a ratification of the contracts nor any facts from which it can be inferred. Continuing in possession of the land and refusing to pay the note are not sufficient to prove ratification. See *Chandler vs. Simmons*, 97 Mass., 508; *Walsh vs. Young*, 110 Mass., 396; *Bartlett vs. Drake*, 100 Mass., 174."

The case of *McCarty vs. Carter*, 49 Ill., 53, was a petition to establish a mechanic's lien for the construction of a building by Carter upon a lot belonging to Lucy J. Davis, a minor, which building was erected under a written contract made by Samuel McCarty, the stepfather of Lucy J. Davis,

and in which case there was a decree in the lower court establishing the lien on the theory that Samuel McCarty was authorized to make the contract by Lucy J. Davis, and that she was estopped to set up her minority because after she became of age she received the rents and profits or a part thereof of the building erected under the contract. In reversing the decree the court spoke clearly upon this subject, and the language of the court so aptly elucidates the point now under consideration that we crave indulgence for a somewhat extended quotation from the opinion as found at pages 55, 56 of the report. It is there said:

"The lien in this class of cases arises from work done or materials furnished under an obligatory contract, and if the contract ceases to be binding the lien necessarily fails. An infant is not bound by his contract, except in certain cases, to which the erection of a building for rent does not belong. A conveyance or mortgage by him of his real estate would not be binding upon him, and the legislature certainly never intended to allow him to encumber his property, indirectly, by a contract for its improvement when he cannot do the same thing in a binding mode by an instrument executed expressly for the purpose. A minor who has nearly attained his majority may be as able in fact to protect his interests in a contract as a person who has passed that period; but the law must necessarily fix some precise age at which persons shall be held *sui juris*. It cannot measure the individual capacity in each case as it arises. It must hold the youth who has nearly reached his majority to be no more bound by his contract than a child of tender years, and neither in one case nor in the other can it permit a contractor to claim a lien against his property under the guise of a contract for improvement. This would expose minors to ruin at the hands of designing men. The mechanic who erects a building must take, like all other persons, the responsibility of ascertaining that he is contracting with a person who has reached the requisite age. We therefore hold it immaterial whether Lucy J. Davis, being then a minor, authorized McCarty to make this contract or not.

"Neither do we consider her receipt of rents, after she became of age, such a ratification of the contract of McCarty,

even though made, as the instruction says, in her behalf, as would operate to create a lien against her. Ratification by an adult of a contract made by him when a minor is a question of intention. It can be inferred only from his free and voluntary acts or words. *But it would be unreasonable to compel a minor to choose between the utter abandonment of his property and the creation of a lien upon it under a contract made during his minority, and to say if he retains the property he ratifies the lien.* If we were to hold that the mere receipt of rents amounted to a ratification, we should be taking from the minor the protection which the law designs to give him, for the builder might safely assume the minor would continue in the possession of his own property, and thus, by ratification, create a lien which the statute had not given when the contract was made. The builder might thus make what contract he could with the minor under the assurance that, though the contract was not binding and the statute gave him no lien, one would nevertheless be worked out for him by a necessary ratification."

In *Wieland vs. Kobick*, 110 Ill., 16, the court, at p. 18 of the report, uses the following language:

"The other question which appellants make upon the record is as to the effect of plaintiff's deed to Emily C. Cummings—whether or not plaintiff was estopped from disaffirming such deed made while she was a minor, she having stated therein that she was of age. The authorities seem abundantly to establish that a defendant is not estopped from setting up infancy as a defense to a contract by his fraudulent representations that he was of full age (*Merriam vs. Cunningham*, 11 Cush., 40; *Studwell vs. Shapter*, 54 N. Y., 249; *Gilson vs. Spear*, 38 Vt., 311; *Burley vs. Russell*, 10 N. H., 184; *Conrad vs. Lane*, 26 Minn., 389; *Brown vs. McCune*, 5 Sandf., 228). In the latter case the court said: 'We are not aware that any case has gone the length of holding a party estopped by anything he has said or done while he was under age, and we think it would be repugnant to the principle upon which the law protects infants from civil liabilities in general.' And further went on: 'We are clear that the doctrine of estoppel is inapplicable to infants.'

"The conclusion, we think from the authorities, must

follow that the statement in the deed of plaintiff that she was of age is not an estoppel to the disaffirmance of it."

See also—

Brantley vs. Wolf, 60 Miss., 422.
Conrad vs. Lane, 26 Minn., 389.
Whitcomb vs. Joslyn, 51 Vt., 79.
Wilson vs. Branch, 77 Va., 65.
Meyers vs. Landes, 7 Dana, 507.
Gale vs. Martin, 4 Chancery Division, 428.

In the case of *Stekeman vs. Dawson*, 1 DeGex & Smale, 90, there was an elaborate consideration of the question whether a minor could be held to have committed a fraud by merely refraining from stating his minority in a case where the other parties to the contract dealt upon the faith of his being of full age, but where there was no false assertion by the minor touching the matter of his nonage. The authorities are quite fully reviewed. The case was one where a bill was filed to enjoin the infant, who had attained his majority, from disaffirming his contract. In stating the position of the complainant the court uses the following language (pp. 103, 104):

"Did he then during his minority commit in respect to the matter in question a fraud of such a nature as to render him now amenable to this jurisdiction for the purpose of relief on the ground of fraud? Now, the fraud imputed to him is not that of making a false assertion or an express misrepresentation; he made none. The fraud imputed to him is that merely of not disclosing the fact of his minority. * * * Now, though the imputed fraud is that merely of not disclosing a fact, yet it has been said by the plaintiffs' counsel that a fraudulent suppression or a fraudulent concealment may be and sometimes is equivalent civilly to a false assertion fraudulently made in express terms.

"This I am very far from denying. I accede to the proposition; but they say, moreover, in effect that in the case before the court, as the dealings * * * were dealings

which from their nature could not bind an infant without fraud on this part, it was a duty incumbent on him to apprise them of his minority; that he did not do so; that from the nature of the dealings his omission to do so was equivalent to a positive and express denial by him of the fact of minority, and that this was a fraud on his part, for which, notwithstanding his minority at the time, he became or was answerable in equity after his majority."

After reviewing the authorities at considerable extent the vice-chancellor disposes of this contention as follows (p. 113):

"Apart, however, from any peculiarity of circumstances the plaintiffs seem substantially to contend for not less than this general proposition, that if a minor deals in a matter of contract with a person who, having no notice of the minority, does, without any representation to him on the subject, believe the minor to be of full age, the minor is, after his majority at least, answerable in equity to that person for the contract or the consequences or liable in equity to be compelled to restore him to his original position. * * * I am not aware that such a proposition is founded in principle or supported by authority that binds the court. It seems to me full of danger and evil, as was said at law in a case already mentioned, where it was held that an action of deceit would not lie upon an assertion by a minor that he was of full age."

And again at pages 116 and 117 of the report the following occurs:

"There may be a want of delicacy or, indeed, of morality in the conduct of a young man of twenty buying a picture or a statue upon credit without mentioning his age; but laws cannot vindicate every deflection from propriety, and it must be preferable, surely, that men of full age, in or out of trade, should sometimes suffer for acts of carelessness or imprudence than that there should be given the obvious facility and plain encouragement to minors to be their own destroyers and to others to make them a prey, which would be afforded by the rule that mutual silence, with an appearance of manhood, should expose a boy, upon the ground of

fraud, to be fixed after his majority with the most rash and foolish contracts or with the liability to restore money wasted in childish extravagance. * * * On the whole, if it be assumed that from the beginning to the end of the year 1842 the plaintiffs * * * believed John Kiddell Dawson [the minor] to be of full age and had no reason to suspect the contrary, the case is still not one in which, either upon principle or upon such authority as binds, independently of principle, the court, it ought, in my judgment, to pronounce that a fraud has been committed by him, in respect of which relief in equity should be now given against him."

V.

But in the case at bar there is no possible room for the application of the doctrine above considered, and this for the reason that Mrs. Utermehle at the time of making the loan in question did, through her attorney, Mr. Woodward, have, at least, constructive notice of the fact of the then infancy of Mrs. MacGreal.

At the time that Woodward examined the title for the purpose of advising Mrs. Utermehle with reference to the proposed loan, the records examined by him disclosed the pendency of a suit on the equity side of the District court affecting the very property in question, brought by Carlotta M. Moore, by her mother as her next friend, against Mr. Porter, the trustee in one of the trust deeds then upon the property, to cancel that trust deed. The evidence shows that the ground of that bill was the infancy of the complainant at the time of the execution of that trust deed. It is to be presumed that the bill correctly stated the date of her birth, and if that bill had been found and examined by Mr. Woodward the fact of infancy would have been conclusively shown. His attention was called to this bill; he sent once to the office of the clerk for the purpose of securing the papers, but found they were not upon the files (R., pp. 21–26). He learned through his son and business asso-

ciate, before the closing of the loan in question, who was the attorney of the complainant in the case, and this record shows that that attorney, Mr. Mattingly, appeared upon the argument in this case in behalf of the complainants, before the District Court of Appeals. (R., p. 150)

There can be no question that when Mr. Woodward, examining this title for Mrs. Utermehle, found a pending suit brought by the proposed grantor, by her next friend, against a trustee holding a prior trust deed upon this very property for the cancellation of that trust deed, and which suit he required to be dismissed and the costs therein paid as a condition to the closing of the loan, he was bound to the exercise of reasonable diligence to ascertain what was in that suit. It was a case of notice by *lis pendens*, and he and his client are chargeable with notice of all that would have developed or that might reasonably have been developed by complete and diligent inquiry as to that action. This would have disclosed to him the minority of the party with whom his client was dealing, and therefore the case is one where the complainant below, instead of being in a position to charge that she was defrauded by the silence of appellant, is in a position where in fact she is chargeable with notice at the time by matter of record of the minority of the party with whom she was dealing. The law in such a case is admirably stated in *Dibble vs. Jones*, 5 Jones Equity (N. C.), 389. It is there said:

"There is another feature in this transaction which is opposed to the plaintiff's equity. They had sufficient warning that the defendant was not of age to induce fair and prudent men to desist, and yet they persevered, choosing to run the hazards for the game. They ought to abide the result of the chances."

VI.

AS TO SUBROGATION.

We maintain that there is no room to invoke the doctrine of equitable subrogation in the present case upon the pleadings. The bill herein does not seek to enforce a lien under the earlier mortgages, which were paid off out of the money loaned by complainant; but complainant stakes her entire claim for relief in her bill upon the proposition that she is entitled to enforce by foreclosure the mortgage contract in controversy.

The Court of Appeals, upon the strength of *Langdon vs. Clayson*, 75 Mich., 204, held that there could be no doubt as to the right to a decree of foreclosure to the extent of these prior mortgages. We respectfully submit that the case cited does not support the position taken by the District Court of Appeals. In the case in the 75th Mich. the facts were these: A bill was filed to foreclose a mortgage given by a minor, to which a grantee of the minor alone interposed a defense. He set up the minority of the mortgagor at the time of executing the mortgage and disaffirmance. Thereupon an amended bill was filed, setting forth that the mortgage was given *exclusively for* moneys that were used *alone* to pay off two prior mortgages upon the property, for the payment of which the minor was bound, or at least intended to provide; that the money was so used, and in addition it was shown that nearly a year after executing the mortgage sought to be foreclosed she made a warranty deed of the land in question to John Q. Wakely, one of the defendants, containing this provision: "The above is subject to a certain mortgage given to Langdon March 28, 1882, for $900;" and the amended bill expressly prayed subrogation to the rights of the mortgagees in the original mortgages.

Of course, under such circumstances, the complainant

was held entitled, upon the doctrine of subrogation, to the enforcement of the mortgage; but that authority must be read in the light of the special facts, and does not fit a case presenting the features of the case now at bar, and particularly in the absence of proper pleadings.

The doctrine of equitable subrogation, in the case of a use of a part of the moneys secured by a mortgage for the discharge of prior mortgages, is correctly and admirably stated by the supreme court of New Jersey in the case of *Coe vs. New Jersey Midland Railroad Company*, 31 N. J. (Eq.), 105–136, as follows:

"The real question in all such cases is whether the payment made was a loan to the debtor from a mere design to aid him, or whether it was with the expectation of being substituted in the place of the creditor. If the former, he is not entitled to subrogation; if the latter, he is."

Here was a loan made of eight thousand dollars by Mrs. Utermehle to an infant, for which the infant executed her note and the mortgage sought to be foreclosed. Was this loan made in the expectation and with the intention that Mrs. Utermehle should be substituted in the place of the prior mortgagees, or was it a mere loan and accommodation of money to an infant without knowledge of the infancy, but upon the faith of a security executed at the time, and which was at the time believed to be good? Obviously the latter was the fact. The amount of the prior mortgages, with all accumulations of interest upon them, was less than three thousand dollars at the time of this transaction, and that there was then no thought or expectation of any substitution of subrogation is evidenced by the fact that the prior mortgage notes paid off by Mr. Woodward, as the agent of Mrs. Utermehle, and held by him until produced upon the trial of this case, were both of them marked across their face as canceled and paid (R., p. 46). The two transactions were as absolutely independent as if the property

mortgaged as security for the $8,000 alone had been a different property from that covered by the earlier two mortgages. True it was required that these two mortgages should be discharged in order to clear the title pledged for the benefit of the lender, but, as before stated, the transaction was a mere matter of usual and ordinary accommodation, with no thought of substitution or subrogation in the minds of any of the parties.

What was done with the mortgages themselves, what steps were taken to release them of record, does not appear in this case, but the fair presumption is that the mortgages were formally released under Mr. Woodward's direction for the purpose of perfecting the security of the $8,000 mortgage. This being so, we respectfully insist, the doctrine of equitable subrogation does not apply.

The law as laid down by the supreme court of New Jersey in the case above cited was approved and followed in a case presenting many features like the one at bar by the supreme court of Nebraska. The case is that of *Bohn Sash and Door Company vs. Case et al.*, 42 Neb., 281.

In that case a loan of $35,000 was made, with which four prior mortgages were paid off, and a balance left in hand was applied toward the completion of improvements upon the mortgaged property. The doctrine of equitable subrogation was sought to be applied in that case in favor of the mortgagees holding under the $35,000 mortgage because the major portion of the moneys realized upon that mortgage had been applied to the discharge of the earlier mortgages. The right of subrogation was denied by the court, and we quote the following language from the opinion as found at page 298 of the report:

"There is no equitable right of subrogation shown on the ground of mistake. The evidence leaves no room for doubt that the payment of the mortgages prior to that taken in favor of Myers [the mortgagee] was made simply to remove and cancel those encumbrances, so that thereby the mort-

gage for the security of the $35,000 should be the first lien. It is not enough to entitle to subrogation that with the proceeds of the Myers mortgage prior mortgages have been discharged. 'The real question in all such cases is whether the payment made by the stranger was a loan to the debtor through a mere desire to aid him or whether it was made with the expectation of being substituted in the place of a creditor. If the former is the case he is not entitled to subrogation; if the latter, he is' (*Tradesmen's Building Association vs. Thompson*, 32 N. J. Eq., 133; citing *Coe vs. New Jersey M. R. Co.*, 4 Stew. [N. J.], 105, 106). We conclude, therefore, that no good reason has been shown for the subrogation of Jeffries & Sons to the rights of the holders of the mortgages which, with the proceeds of the Myers mortgage, were satisfied."

But, independent of this question, we confidently maintain that to warrant a foreclosure under subrogation the pleadings must bring forward the securities thus sought to be foreclosed, so that issues may be made up on them, and so that the rights of the parties may be adjudged and determined with reference to such substituted securities.

Under a bill setting up the prior mortgages and claiming a right to foreclose by virtue of an equitable subrogation, the extreme limit of recovery would have been the amount of those prior encumbrances, but under the decree and judgment of the Court of Appeals in this case the District supreme court is directed to enforce a decree of foreclosure of the $8,000 mortgage executed on the 22d of October, 1889, notwithstanding the fact, proved indisputably, that the female appellant was then a minor, and notwithstanding the further fact that she thereafter in due and legal form and in apt time disaffirmed that trust deed. In other words, the decree of the Court of Appeals is not that complainant be adjudged entitled to a foreclosure of the earlier mortgages by reason of equitable subrogation, but that she be entitled to a foreclosure of her own mortgage, with all its contract incidents of interest, costs, &c.,

notwithstanding that that mortgage was made by a minor and was duly disaffirmed. We respectfully submit that in no possible aspect of the law can that decree or order be justified, and that there should be a reversal in the present cause with a direction to affirm the decree of the supreme court of the District of Columbia.

All of which is respectfully submitted.

W. P. BLACK,
For Appellant.

HENRY E. DAVIS,
Of Counsel.

167-688

Office Supreme Court, U. S.
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167-688

IN THE

Supreme Court of the United States

CARLOTTA M. MACGREAL AND
WILLIAM PIERRE MACGREAL, *her husband*,
APPELLANTS,

vs.

ROSE M. TAYLOR AND
MAMIE E. NORMENT,
Executrices of Sarah Utermehle, deceased,
APPELLEES.

No. 75.
Oct. Term,
1896.

(15,518.)

BRIEF ON BEHALF OF APPELLEES.

WM. F. MATTINGLY,
Jas. S. EDWARDS & BARNARD,
Solicitors for Appellees.

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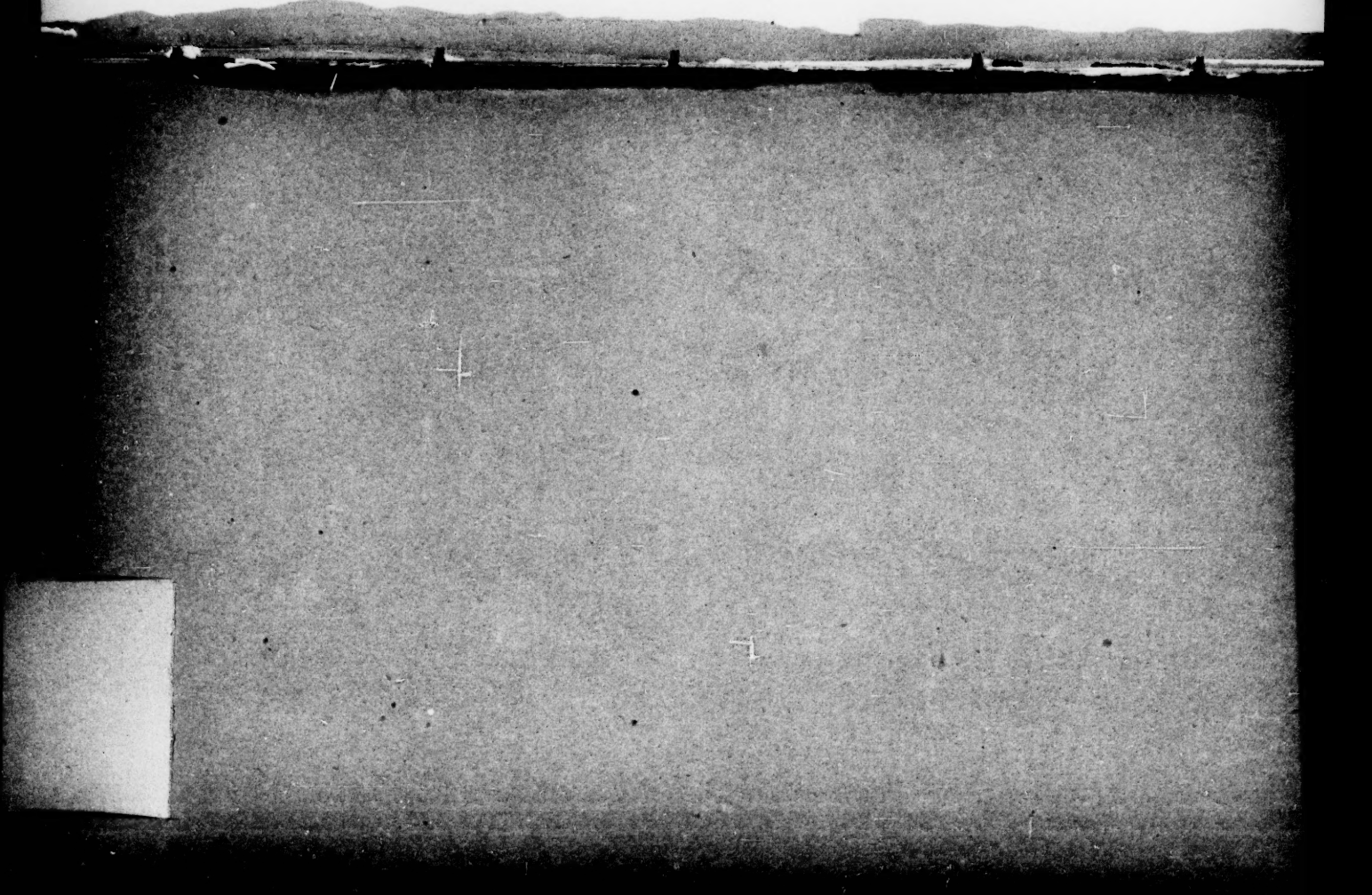

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STATEMENT.

Carlotta M. MacGreal, whose maiden name was Burke, was born June 20, 1869. (60.)

She married Robert E. Moore in 1886; September 3, 1887, her husband bought lot 49, square 111, in Washington City, for $4,250, of one H. C. Porter, and paid $1,400 cash, assumed $1,250 secured on the lot by trust executed by Porter, and gave a second trust to secure Porter $1,600, the balance of the purchase money. (46, 134.) The title was conveyed by Porter to Moore and wife, as joint tenants, thereby creating an estate by the entirety.

Without making further payments on the lot, Robert E. Moore died April 20, 1888, and the title in fee-simple thereby became vested in his widow. After his death, the

debt due Porter not being paid, the trustees advertised the lot for sale in May, 1889; and Mrs. Moore, by her mother, as next friend, filed a bill in equity, (No. 11,828) (22) to enjoin this sale on the ground that she was an infant when she joined in the note and deed of trust. A temporary restraining order was granted, which was afterwards discharged, but an answer was filed and issues made, and the suit was pending until November 2, 1889, when it was voluntarily dismissed. Mrs. Moore was desirous of saving this property from the sale under the trust, and also wished to build a house upon it, so that she applied to Frank T. Rawlings, a real estate broker, for a loan of $8,000. Mr. Rawlings secured the loan of Mrs Sarah Utermehle, conditioned upon the money being disbursed by her attorney, Wm. R. Woodward, to pay off the encumbrances and the payments to the builder on the certificates of the architect, as the building advanced (18, 47).

To secure this loan of $8,000, Mrs. Moore executed a deed of trust October 22, 1889 (56), and Mrs. Utermehle sent her check to Mr. Woodward for the money (45); and he paid off the two notes of $1,250 and $1,600, secured by the prior trusts, and had them released, and also had the said equity suit dismissed. He retained the notes as vouchers (46).

The contract for the building was made by Mrs. Moore with one Jos. W. Meyers, who gave a bond of $5,000 for the faithful execution of the work. J. G. Meyers was the architect (110–115).

The house was erected and is No. 1612 19th street N. W. The moneys were faithfully disbursed by Mr. Woodward, but were not sufficient to fully pay for the house, so that several liens were filed under the mechanic's lien law (136). In the meantime, February 17, 1890 (61), Mrs. Moore married Mr. MacGreal, and in the summer of 1890 they moved into the new house, and have continued to live there ever since.

When the second instalment of quarterly interest of $120

came due to Mrs. Utermehle, April 22, 1890, it was not paid (58).

May 27, 1890, Mrs. Utermehle wrote Mrs. MacGreal about it (117), and on June 13, 1890, received an answer (116) wherein Mrs. McGreal disclaimed all liability on the ground that she was a minor when she made the note and deed of trust. On June 23, 1890, she gave formal notice to Taylor and Woodward, trustees, that she disclaimed liability on account of her said contract, and stated that she was born June 20, 1869 (125). This paper was filed in the recorder's office at 3.45 P. M. (126). On the same day (June 23, 1890) Mrs. Utermehle filed the bill in this cause for a judicial foreclosure of the said trust, she being then the holder of the note secured and the beneficiary named therein, and Mrs. MacGreal served with a subpœna at 1 P. M. (37). June 27, 1890, Mrs. MacGreal executed a further deed of disaffirmance to one Wm. P. Black (136), her husband's brother-in-law, residing in Chicago (108). This was recorded on July 14, 1890 (136).

An answer was filed by Mrs. MacGreal admitting all the material allegations of the bill, but disclaiming liability by reason of her infancy when the trust was executed, and her subsequent disaffirmance after she was of full age (6, 7).

Proof was taken showing that the loan of $8,000 was made in good faith, on the supposition that it was secured by the first trust on said property. No suggestion of infancy was made to Mrs. Utermehle or the broker or attorneys, and the papers in equity suit 11,828, were not accessible to Messrs. Woodward & Son, who examined the title, and they in fact knew nothing of the averment of infancy contained in the bill in that case (25, 27).

The first knowledge that Mrs. Utermehle or her attorneys had of infancy, was by the letter from Mrs. MacGreal of June 13, 1890, (116) repudiating her obligation.

The cause came on for hearing in special term before Justice Bradley, and he signed a decree dismissing the bill

with costs (9). From this an appeal was taken to the court in general term, and by virtue of the statute creating the Court of Appeals, the case was transferred to that court for hearing, and Justice Shepard delivered an opinion (reported in 1 Appeal Cases D. C. 359) (151–160), reversing the decree appealed from. A final decree was entered by the Court of Appeals fixing the amount due and directing sale of the property, if the amount was not paid within a time named (163).

From this decree defendants, MacGreal, appeal to this court (165). While the case was pending in the General Term on appeal, Mrs. Utermehle died, and her executrices were substituted as parties complainant (10–11).

POINTS.

1. We think the Court of Appeals struck the keynote of this case when it said (158):

> **"In our opinion it would be a reproach upon the whole system of equity were we to permit the defendant, under all the facts and circumstances of this case, to hold and enjoy all the fruits of this fair and advantageous contract and then repudiate its obligations."**

This conclusion is based upon sound reasoning, common honesty, and fair dealing, as well as upon the authority of well-considered cases.

> "Infancy is not permitted to protect fraudulent acts, and, therefore, if an infant pays money on his contract and enjoys the benefit of it, and then avoids it when he comes of age, he cannot recover back the consideration paid.
>
> "On the other hand, if he avoids an executed contract when he comes of age, on the ground of infancy, he must restore the consideration which he had received."
>
> 2 Kent. Comm. 240.

Many authorities say, in substance, that the privilege of pleading infancy is to be regarded as a shield to protect the infant, and not as a sword with which he may injure another.

Zouch *vs.* Parsons, 3 Burrows, 1794–1802.
Carr *vs.* Clough, 26 N. H. 293.
Badger *vs.* Phinney, 15 Mass. 363.

A minor is sufficiently protected from imposition and danger, if he may, on arriving at full age, rescind his contract, upon condition that he restore to the person with whom he has contracted, all the rights previously held.

Hubbard *vs.* Cummings, 1 Greenleaf (Me.) 11.

> "This rule we think is founded on strict impartial justice, and is the law of this case. Infancy may and should protect, but should not be permitted to oppress or injure others. The infant, as the adult, should be required to act justly."
>
> Bailey *vs.* Barnberger, 11 B. Mun. 115.

The rule is laid down as follows in Manning *vs.* Johnson, 26 Ala. 446, 452:

> "If the infant after he arrives at age, is shown to be possessed of the consideration paid him, whether it be property, money, or choses in action, and either disposes of it so that he cannot restore it, or retains it for an unreasonable length of time after attaining his majority, this amounts to an affirmance of the contract. So, likewise, if it be shown that he has the power to restore the thing that he received, he cannot be allowed to rescind without first making restitution."

The Court of Chancery of New Jersey has recently held—

> "that a defendant cannot protect himself against the enforcement of a contract, under which he has secured a loan of money, under the plea of infancy, without returning the money loaned."
>
> Pemberton Bldg. Assn. *vs.* Adams, 31 Atlantic Rep. 280.

Slaughter *vs.* Glenn, 92 U. S. 242, was an appeal from the circuit court for the western district of Texas.

Mrs. Slaughter, a married woman, owned a parcel of land which she sold and conveyed to Dunn, in the absence of her husband, acknowledging the deed as if she were a *feme sole*. With the purchase money received from Dunn, she purchased and had conveyed to her another parcel of land known as the Culbertson farm. Dunn conveyed the parcel he so purchased to Glenn. Slaughter and wife brought an action of trespass to try title against Glenn, and Glenn thereupon filed a bill to quiet title. The court decreed a perpetual injunction in the action at law and quieted Glenn's title.

In affirming that decree, this court, while it held that the case was to be decided by it according to the jurisprudence of Texas, in the course of its opinion, says:

> "Mrs. Slaughter paid for the Culbertson farm entirely out of the proceeds of the property which she conveyed to Dunn & Co., and there was an overplus left in her hands. If we were constrained to hold that she is entitled to recover back those premises, it would then have to be considered whether she should not be regarded as a trustee *ex maleficio*, and required to convey to the appellees, as representing Glenn, the Culbertson farm, in which the money of Dunn & Co. was invested."
>
> Oliver et al. *vs.* Piatt, 3 How. 333.
>
> May *vs.* Le Claire, 11 Wall. 217.

> "Again, it is the settled law of Texas that if an infant convey, and after coming of age choose to rescind, he must, as a general rule, restore what he has received, before he will be permitted to recover; and the same rule is applied to married women under like circumstances."
>
> Womack *vs.* Womack, 8 Tex. 397.

In Sims *vs.* Everhardt, 102 U. S. 300, relied on by the other side, the grantee had paid off a mortgage. The bill was filed to set aside the deed, for an account of the rents and profits as well as of the amount she is in duty bound to pay on account of the purchase money paid by the grantee, and the mortgage. The court below dismissed her bill. This court decided she was entitled to the relief she asked. In other words, inasmuch as in disaffirming the contract, she offered to refund what she had received, this court held she was entitled to do so.

A contract with an infant being voidable, upon disaffirmance by the infant, it becomes in law void *ab initio*, and each party is entitled to recover what has passed under it.

In Vasse *vs.* Smith, 6 Cr. 226, this court decided that an infant was liable in trover for conversion when goods were received under contract.

Langdon *vs.* Clayson, 75 Mich. 204, was somewhat similar to the case at bar. Mrs. Clayson, under twenty-one years of age, had purchased a parcel of land subject to two mortgages. She borrowed money from complainant to pay off these mortgages, giving him a mortgage on the land for the amount borrowed. The two mortgages were paid off and the land released. Complainant filed a bill to foreclose the mortgage given him. The court held that she could not retain the land without ratifying the mortgage; and that while courts will guard with jealous care the rights of infants, they will not aid them to perpetrate wrongs upon innocent parties, nor aid in depriving them of their just rights.

The notes appended to the report of the case in 18 Am. St. Rep. p. 569, are a valuable treatise upon the law of infancy. At page 686 is discussed the principle involved in the case at bar.

It hardly seems necessary to cite any further authorities to support this proposition, as "the good sense and equity of the doctrine" is so apparent, but, inasmuch as the appellant strenuously contends for a different rule, we will add the following, all of which are in favor of our position:

Tyler on Infancy and Coverture, Secs. 36, 37, 38.
Bacon's Abr. (Lease, B.)
Schouler's Dom. Rel., Sec. 446.
Story Contracts, Sec. 42.
1 Jones Mortg., Secs. 104, 105.
9 Viner's Abr., 414 (Enfant).
Hastings *vs.* Dollarhide, 24 Cala. 195.
Skinner *vs.* Maxwell, 66 N. Car. 45.
Thomas *vs.* Phillips, 73 Ga. 140.
Stout *vs.* Merrill, 35 Iowa, 47.
Phillips *vs.* Green, 5 T. B. Mon. (Ky.) 345.
Dana *vs.* Combs, 6 Greenleaf (Me.), 89.
Boyden *vs.* Boyden, 9 Met. (Mass.) 521.
Young *vs.* McKee, 13 Mich. 552.
Cogley *vs.* Cushman, 16 Minn. 397.
Kerr *vs.* Bell, 44 Mo. 120.
Uecker *vs.* Koehn, 21 Neb. 571.
Roberts *vs.* Wiggin, 1 N. H. 73.
Roof *vs.* Stafford, 7 Cow. (N. Y.) 179.
Henry *vs.* Root, 33 N. Y. 526.
Lynde *vs.* Budd, 2 Paige Chan. 191.
Curtiss *vs.* McDougall, 26 Ohio St. 66.
Wade *vs.* Love, 69 Texas, 522.
Smith *vs.* Evans, 5 Humph. (Tenn.) 70.
Weed *vs.* Beebe, 21 Vt. 495.
Mustard *vs.* Wohlford, 15 Gratt. (Va.) 340.

Callis *vs.* Day, 38 Wis. 643.
Gillespie *vs.* Bailey, 12 W. Va. 70.
2 Pomeroy's Equity, Sec. 780.
Stack *vs.* Cavanaugh, 30 Atlantic Reporter, 350.

2. There is another principal of equity jurisprudence which will protect Mrs. Utermehle's estate beyond any question as to the moneys advanced to pay taxes and take up the notes secured by the prior deeds of trust (47). This is the doctrine of *subrogation* whereby Mrs. Utermehle became in equity, as the holder of the notes secured by the prior trusts, subrogated to all the rights and benefits which Porter had of enforcing his lien for the purchase money.

Jones on Mortgages, Secs. 874, 877, 1080.
3 Pomeroy Equity, Sec. 1300 and note.
Ottman *vs.* Moak, 3 Sandf. Chan. 431.
Callis *vs.* Day, 38 Wis. 647.
Langdon *vs.* Clayson, 75 Mich. 204.

3. As to the point made by the appellant that the Supreme Court of the District of Columbia had no jurisdiction in this case, because of the terms provided in the deed for a sale by the trustees, we say: 1. That such remedy by sale on publication of notice by the trustees, is not an exclusive remedy and cannot deprive the court of its general powers. 2. The contention that the deed itself is void by reason of infancy of grantor, would show that the effort to sell by trustees would result in litigation and be unsatisfactory to any one contemplating the purchase of the property, and 3, Mrs. Utermehle, as the beneficiary of the trust, had the privilege of applying to the court of equity for any relief possible to be granted, under the general principle applicable to trusts, and particularly under the rule that allows her to be subrogated to the rights of the vendor, for his lien for purchase money is only to be enforced by a bill in equity.

Sec. 808, Rev. Stat. D. C.

This section provides that—

> "The proceeding to enforce any lien shall be by bill or petition in equity," etc.

In conclusion, we beg leave to refer to the able opinion of Justice Shepard, printed in the Record (151 to 160), (1 App. Cases D. C. 359), and ask that the same may be read and considered as a part of this brief; and on the reasoning and authorities therein contained, we submit that the decree appealed from should be affirmed, with costs.

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Jas. S. EDWARDS & BARNARD,
Solicitors for Appellees.